

EXHIBIT D - 1 Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

MORGAN ART FOUNDATION LIMITED,

Plaintiff,

-against-

MICHAEL MCKENZIE, AMERICAN IMAGE ART,
JAMIE THOMAS AND JAMES W. BRANNAN AS
PERSONAL REPRESENTATIVE OF THE ESTATE
OF ROBERT INDIANA,

Defendants.

- - - - - x

MORGAN ART FOUNDATION LIMITED, SIMON
SALAMA-CARO, SHEARBROOK (US), LLC, FIGURE 5
ART LLC,
AND RICATALOGUE RAISONE, LLC

-against-

JAMES W. BRANNAN AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF ROBERT INDIANA,

Defendant.

- - - - - x

Zoom video conference deposition of
MICHAEL MCKENZIE, taken pursuant to
notice, was held remotely, commencing
September 9, 2020, 9:16 a.m., before
Leslie Fagin, a Stenographic Court
Reporter and Notary Public in the State
of New York.

- - -

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1 APPEARANCES:

2 QUINN EMANUEL URQUHART & SULLIVAN, LLP
3 Attorneys for Plaintiff

4 51 Madison Avenue
5 New York, New York 10010

6 BY: MICHAEL NOSANCHUK, ESQUIRE
7 ALEX SPIRO, ESQUIRE

8 MARKHAM & READ

9 Attorneys for Michael McKenzie and American
10 Image Art

11 One Commercial Wharf West
12 Boston, Massachusetts 02110

13 BY: JOHN MARKHAM, ESQUIRE

14 VENABLE, LLP

15 Attorneys for James W. Brannan
16 1270 Avenue of the Americas

17 New York, New York 10020

18 BY: JOHN VASQUEZ, ESQUIRE

19 SERPE RYAN LLP

20 Attorneys for Jamie Thomas

21 16 Madison Avenue
22 New York, New York

23 BY: PAUL RYAN, ESQUIRE

24 ALSO PRESENT:

25 HARRY BERGENFIELD, VIDEOGRAPHER

1 M. McKenzie

2 ask you some questions today and get a little
3 bit of information on your perspective on the
4 events surrounding this.

5 So, if you have a question about
6 anything I ask you, you know, feel free to
7 ask me to clarify if you need anything, okay?

8 A. Absolutely, thanks.

9 Q. So it seems that you are involved
10 in several disputes with the estate of
11 Mr. Indiana.

12 Can you describe to me what your
13 issue is with the estate?

14 A. We're mainly trying to figure out
15 how we can both benefit from HOPE. That's
16 really what we're trying to do.

17 Q. And are you working collaboratively
18 with the estate on that issue?

19 A. Yes.

20 Q. And when you say that, I know that
21 there were lawsuits filed in Maine and a
22 potential settlement.

23 Is there a settlement on the table?

24 A. Yes, there is. We're just doing
25 the details right now.

1 M. McKenzie

2 THE VIDEOGRAPHER: We are now on
3 the record. This begins Video No. 1 in
4 the deposition of Michael McKenzie in
5 the matter of Morgan Art Foundation
6 verse McKenzie. Today is Wednesday
7 September 9, 2020, and the time is 9:16
8 a.m. Counsel and all parties present
9 will be noted on the stenographic
10 record.

11 Will the court reporter please
12 swear in the witness.

13 MICHAEL MCKENZIE, called as a
14 witness, having been duly sworn by a Notary
15 Public, was examined and testified as
16 follows:

17 EXAMINATION BY

18 MR. SPIRO:

19 Q. Can you state your name for the
20 record, sir?

21 A. Michael McKenzie.

22 Q. My name is Alex Spiro. I know
23 you've dealt with other attorneys on this
24 case, and you know that I'm not the primary
25 lawyer handling the case, so I'm here to just

1 M. McKenzie

2 Q. And does the settlement involve
3 anything other than HOPE?

4 A. It involves Robert Indiana, and we
5 have a binding agreement that we're just
6 working through right now.

7 Q. What are the terms of that
8 agreement?

9 A. I don't believe --

10 MR. MARKHAM: Objection. This is
11 offer and compromise stuff and there is
12 no settlement that's been finalized. We
13 are in the middle of discussions, so it
14 could be very difficult for him to say
15 what they are. We're meeting again
16 tomorrow, so we filed a report with the
17 court today, or we're filing one saying
18 that we're still in negotiations. So
19 there's nothing definitive. We're just
20 talking.

21 MR. SPIRO: Okay. Objection is
22 noted for the record.

23 Q. Please answer my question. What is
24 your understanding of the terms of the
25 settlement?

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1 M. McKenzie

2 A. It's not finished yet. It's like
3 saying what is my book about that I haven't
4 not written, what are you talking about.

5 Q. Well, I'll try again.

6 What are the terms that you're
7 hoping are going to be the terms of the
8 settlement?

9 A. I'm hoping that I get everything in
10 the world given to me for free.

11 Q. Okay. And what are the
12 realistic -- what are your realistic
13 expectations in the settlement?

14 A. We want to continue what we started
15 with Robert Indiana. That's what we want to
16 do.

17 Q. And what is that exactly?

18 A. Publishing Robert Indiana's HOPE
19 and other things that we did.

20 Q. Can you describe those other
21 things?

22 A. Well, I started working with
23 Robert Indiana in 1971, so there's a lot of
24 things that I've done with him. You know, I
25 might have --

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1 M. McKenzie

2 Q. Are you talking --

3 A. -- been talking with --
4 (Simultaneous Crosstalk)

5 MR. MARKHAM: All right. This is
6 John Markham. Please let him finish his
7 answer.

8 A. All right. So, you know, I
9 published major things with Indiana in the
10 '90s, The Book of Love. We did a huge
11 leather book that he always loved. We did
12 some products, I worked with him. Then,
13 later, I got Barak Obama to work with me --

14 Q. Sir, I'm going to stop you. I'm
15 going to ask you to stop here. That's not my
16 question. My question isn't the history of
17 all the works that you've done with him.

18 My question is: After the
19 settlement is entered, what are you hoping to
20 do with Indiana's HOPE trademark or any other
21 thing going forward. I'm not asking for a
22 history.

23 MR. MARKHAM: Objection. There is
24 nothing on the record about a trademark.

25 A. We're not -- trademark. I don't

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1 M. McKenzie

2 know what you're asking about.

3 Q. Strike the word trademark. The
4 word HOPE --

5 A. We have a production list of things
6 that Robert Indiana indicated we could and
7 should do and we would like to continue doing
8 them. Most of them are sculptures.

9 Q. And other than the image of HOPE,
10 the word HOPE, what other things are you
11 talking about?

12 A. None.

13 Q. So you're talking --

14 A. Just HOPE --

15 Q. Pardon?

16 A. You're asking me going forward
17 because your question is morphing on me, so
18 what's the question.

19 Q. Going forward and after the
20 settlement --

21 A. Right.

22 Q. -- other than HOPE, are there any
23 other projects or things not related to HOPE
24 that you intend to do?

25 A. No.

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1 M. McKenzie

2 Q. In your office, just so I can get a
3 picture of it, how many people work in your
4 office?

5 A. Which office?

6 Q. Your art company, AIA.

7 A. Well, we have different offices.
8 The main company is in Katonah and Bedford,
9 New York. It's situated on 25 acres. It's
10 about 39 miles from New York City. And I
11 have, depending on what project we're working
12 on, anywhere from 5 to 12 employees where
13 they're actually all not really employees.
14 They're independent contractors. I employ
15 them as I need them.

16 Q. And is there a sort of reporting
17 structure or hierarchy to the office or is it
18 just you're the boss, and they all work for
19 you?

20 A. That's how it is.

21 Q. And has that been the size of AIA?
22 Again, I understand that it can expand and
23 contract under those parameters but has that
24 been generally the size of it and the
25 structure of it for the last decade?

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1 M. McKenzie
 2 A. Yes. I mean, occasionally, we had
 3 20 people if we had four or five things going
 4 on, but mainly between 5 and 12.
 5 Q. Okay. And you mentioned that --
 6 are there more than one location, or is that
 7 the location that you all work out of?
 8 A. Well, we have -- also have an
 9 office in New York City on Third Avenue and
 10 26th Street.
 11 Q. Okay.
 12 A. And for the duration of most of it,
 13 we had a huge space on Vinalhaven a couple of
 14 blocks away from Robert Indiana's studios, so
 15 that he could come over and work there.
 16 Q. Now, we talked a little bit about
 17 the HOPE work, and there are some contracts
 18 sort of that have been produced in this case
 19 regarding that.
 20 Is it your position that you have
 21 any contract that authorizes a WINE work,
 22 capital W-I-N-E?
 23 A. Well, it doesn't have to be
 24 capital, but yes.
 25 Q. Do you have a contract that

1 M. McKenzie
 2 until I finish.
 3 (Simultaneous crosstalk.)
 4 MR. MARKHAM: I really appreciate
 5 that. I can ask you to clarify your
 6 question any time I want under the
 7 rules.
 8 MR. SPIRO: You're coaching the
 9 witness, I'm going to instruct you not
 10 to coach the witness.
 11 MR. MARKHAM: I'm not coaching the
 12 witness.
 13 MR. SPIRO: If the witness has a
 14 question -- that was the first thing I
 15 said to him. If he has a question that
 16 he needs clarified and he doesn't
 17 understand the question, he can ask me.
 18 MR. MARKHAM: His counsel can do
 19 the same thing.
 20 Q. Do you have a contract that
 21 authorizes BRAT?
 22 A. Thank you for clarifying that.
 23 That makes it much better.
 24 Q. It was clear the first time.
 25 A. Contract with who?

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1 M. McKenzie
 2 authorizes you to produce that?
 3 A. That's correct.
 4 Q. Can you tell me where I can find
 5 that contract?
 6 A. I have it in front of me right now.
 7 Q. Okay. Can you tell me a Bates
 8 number, or describe it in some other way?
 9 A. Sure. Oh, this isn't it. I don't
 10 know. We can get it to you.
 11 Q. And what about BRAT, B-R-A-T?
 12 MR. MARKHAM: Is your question does
 13 he have a contract?
 14 MR. SPIRO: Mr. Markham, if he has
 15 a question that he needs to clarify, he
 16 can ask me. You don't have to keep
 17 interrupting and coaching the witness.
 18 MR. MARKHAM: I'm not coaching the
 19 witness.
 20 Q. If you don't understand my --
 21 MR. SPIRO: Yeah, you are. Oh,
 22 yeah, you are.
 23 MR. MARKHAM: I'm going to wait
 24 until you finish.
 25 MR. SPIRO: Okay. You can wait

1 M. McKenzie
 2 Q. With anybody.
 3 A. Yes.
 4 Q. Who?
 5 A. Johnsonville.
 6 Q. Do you have a contract with Indiana
 7 or his estate or anybody on his side of the
 8 equation for BRAT?
 9 A. That was oral agreements. We did
 10 that for, I don't know, a year and a half or
 11 so to make it. Jamie Thomas supervised it,
 12 who was his POA, and Bob and Jamie and I did,
 13 I don't know how many different versions of
 14 it. It went back and forth between what they
 15 would accept and what Bob would do.
 16 Bob wanted to do something that
 17 they didn't want to do, and then they wanted
 18 to do something that he didn't want to do.
 19 And we had and, ultimately, Bob really wanted
 20 to do it because it was monumental. He had
 21 not done a monumental sculpture in a really
 22 long time. I think that was what made him
 23 decide it, and, also, that he was getting a
 24 couple hundred thousand dollars to do it.
 25 Q. Who witnessed that, what you're

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1 M. McKenzie
 2 calling oral agreement?
 3 A. What is that?
 4 Q. Who witnessed -- who witnessed --
 5 A. Jamie Thomas --
 6 (Simultaneous crosstalk.)
 7 Q. Who witnessed that oral agreement?
 8 A. Jamie Thomas, who also went under
 9 oath in his deposition stating that he
 10 witnessed it.
 11 Q. Anybody else that witnessed it?
 12 A. Well, Sean Hillgrove did, but he's
 13 dead. Sorry. Oh, and Frank Verpoorten, who
 14 was the kind of consultant to Johnsonville,
 15 had several discussions with Indiana about it
 16 as well, and he also met with him personally
 17 as well.
 18 Q. Right. So, if you could listen to
 19 my question, I'm not asking who had
 20 discussions with Indiana. I'm asking who
 21 actually witnessed what you're calling the
 22 oral agreement, do you understand my
 23 question?
 24 A. Yes. And I'm telling you that the
 25 oral agreement was ongoing and that Frank

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1 M. McKenzie
 2 Verpoorten, who was the consultant from
 3 Johnsonville, met with Indiana, talked to him
 4 extensively about what would happen with it,
 5 where would it go, how big it should be and
 6 how much money he would get.
 7 So he was obviously -- he was the
 8 point man for Johnsonville, and Jamie Thomas
 9 was the point man for Indiana and Indiana met
 10 with all three of us on more than one
 11 occasion about BRAT.
 12 Q. But was there an occasion in your
 13 mind in which there was actually an agreement
 14 formalized, not just ongoing discussions?
 15 A. Yes. I think when I gave him a
 16 check for \$320,000, that pretty much
 17 solidified it.
 18 Q. Your position is the agreement
 19 occurred at the time in which you paid
 20 Mr. Indiana?
 21 A. No. The agreement happened when he
 22 started doing drawings and agreed to
 23 Johnsonville to do it. And he told Frank
 24 Verpoorten that he would do it. That was it.
 25 You know, up until then they wanted him to do

1 M. McKenzie
 2 bratwurst. I didn't like it. I thought that
 3 was not really an Indiana word. And I told
 4 Bob I didn't think we should do bratwurst.
 5 So he then wanted to do Brats, which I
 6 also -- I didn't know how we would do that.
 7 And he did drawings of it and, I
 8 don't know, in the round, or whatever it was.
 9 I didn't particularly go for it. But when he
 10 came up with B-R-A-T, I said that could be.
 11 It's a four-letter word. That's an Indiana
 12 word. Let's tell Johnsonville we're on board,
 13 and we did.
 14 Q. So that's the discussion in which
 15 you say there was an agreement for?
 16 A. Yes.
 17 Q. And where were you during that
 18 discussion?
 19 A. I was in Indiana's house.
 20 Q. And it was you and who else was
 21 present during that agreement?
 22 A. Jamie Thomas and Frank Verpoorten
 23 and Sean Hillgrove, but Sean is dead so I
 24 can't really -- he's a little silent right
 25 now.

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1 M. McKenzie
 2 Q. And did you or Sean Hillgrove ever
 3 have any issues between you, any
 4 disagreements?
 5 A. Sean Hillgrove?
 6 Q. Yes.
 7 A. Well, Sean -- I hate to say it
 8 because he's passed on, but Sean Hillgrove
 9 was a heroin addict, and as a general matter,
 10 as a father with two children, I'm not
 11 particularly, you know, fond of heroin
 12 addicts.
 13 Q. Did you two ever have any
 14 disagreements?
 15 A. I just told you what I -- you know,
 16 I mean --
 17 Q. You told me he was a heroin addict.
 18 You didn't tell me if you two had any
 19 disagreements.
 20 A. I never particularly disagreed or
 21 agreed with him, you know. I told Bob we
 22 should really think about getting better
 23 assistants, but that's his call. I don't
 24 hire heroin addicts here.
 25 Q. Were there any other assistants

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1 M. McKenzie
2 that you had problems with that worked for
3 Mr. Indiana?

4 A. Not really. I mean, I know him for
5 a very long time. Frank was the first
6 assistant I got -- I used to drive him off
7 the island and home, so I don't think we had
8 any disagreements. Bow was an interesting
9 character. I don't remember ever having any
10 disagreements with him. Jamie was the guy --
11 was in the last few years. I don't remember
12 having any real disagreements with him.

13 I mean, there were times that Bob
14 would disagree to do something, but what are
15 you going to do, he was a cantankerous person
16 and everyone knew that, so he wasn't going to
17 change, I don't think. Sometimes there would
18 be things that you would think, how could you
19 not want to do this, and he still wouldn't do
20 it.

21 Like, for instance, when I did the
22 deal with Barak Obama, Barak Obama wanted to
23 be in touch with Indiana. I gave Barak Bob's
24 phone number. He called five times. He
25 wanted to get Bob on The Oprah Winfrey Show

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1 M. McKenzie
2 with him and talk about HOPE. And Bob did
3 not answer the phone and did not call Barak
4 back. And then our friend, Joe Biden, who
5 put HOPE on -- both in his house and on Air
6 Force One sent a long and beautiful letter to
7 Bob, and Bob refused to answer it.

8 So things like that, it caused a
9 little bit of a disagreement. You know,
10 Jamie had to be in the middle of it because
11 he was the POA. I don't know if that answers
12 your question or not.

13 Q. Not particularly.

14 Did you speak directly to
15 Mr. Obama?

16 A. I was going through his best friend
17 and attorney, who ironically had lived on
18 Vinalhaven as it turned out. He was a fan
19 both of Barak and Indiana, and he made it
20 happen. I can't remember --

21 Q. Who was that?

22 A. I'm trying to remember his name.
23 He works at Jones Day, very nice person.

24 Q. And whose idea was the word HOPE
25 for his campaign?

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1 M. McKenzie

2 A. It was basically my idea. You
3 know, they were doing change before that.
4 And when I sat down with them, they said --
5 they said that they were thinking of getting
6 a new word and HOPE sounded good. And I
7 reminded them that he had written Audacity of
8 HOPE, why wouldn't they go with that.

9 Q. And did you speak directly to
10 Mr. Biden?

11 A. No, I never spoke to Mr. Biden.
12 That was just -- we sent him a HOPE piece,
13 and it ended up on Air Force One and then it
14 ended up in his house. And I happened -- I
15 didn't know it until I saw a photograph in
16 Vanity Fair with Mr. Biden and HOPE and him
17 talking about it, so that's -- I got it
18 through the media actually.

19 Q. What are the issues that you have
20 with Morgan Art Foundation?

21 A. Let's see. They began with a guy
22 who basically, as my understanding is, he was
23 the Bernie Madoff of London. Bob never met
24 any of the principals over 20 years. They
25 never -- according to Bob, never paid him.

Page 21

1 M. McKenzie

2 When we had an attorney look at his records,
3 it appeared that they had never sent anything
4 resembling the four accountings they were
5 supposed to send a year. According to Bob,
6 he was being cheated. According to Bob, he
7 was being corralled, and he wasn't allowed to
8 do any work.

9 And actually, if you look at it
10 from the time Morgan took over, Bob only made
11 one new work. It's kind of embarrassing.
12 The fact that they're supported by money
13 laundering is something I never thought I
14 would ever be near in my life. I'm a
15 hardworking middle class guy. I'm not
16 involved in money laundering. I don't want
17 to be near money laundering.

18 So Simon Salama-Caro who, when he
19 began all this stuff, is a key reference guy
20 for Brian Ramnarine who, when I met him, he
21 was the worst person I ever met. And as it
22 turned out he was arrested for forgery,
23 including for Robert Indiana. Simon
24 Salama-Caro --

25 (Reporter clarification.)

M. McKenzie

A. What was that? Forgery, F-O-R-G-E-R-Y, and did three years in prison for it. And he told me that Simon was his best friend and they socialized together all the time. So the whole thing was pretty ugly to me. I'm not really involved with criminals, and obviously Morgan and Simon are.

Q. Any other issues or grievances with Salama or Morgan Art?

A. Yes. As I started with Simon, the very first time I met him, he asked me to help him with Love. He had gotten the rights to Love, and didn't know what he was doing with it. And I hooked him up with the Miami Beach, through Dorothy Blau was my art dealer, who also was the dealer for Keith Haring and Andy Warhol and I knew her for many, many years. And we got the City of Miami Beach to put a Love piece on the Causeway.

He said he would pay both Dorothy and myself. Dorothy, by the way, was 87 years old at the time and one of my best

M. McKenzie

friends. He was going to pay each one of us 10 percent. He never paid either one of us, and he ducked us for the entire time. That pretty much told me who he was, too.

And then connecting me to Brian Ramnarine, who was the worst person -- (Reporter interruption.)

A. R-A-M-N-A-R-I-N-E, Ramnarine. It's a funny name, I'm sorry. And he was running all over the world telling people -- he started out saying that HOPE was fake, and Bob didn't even know about it. He went to galleries telling them that. And the next thing that happened was Bob was on The Today Show saying he wanted to bring HOPE to the world. And then Simon changed the story and said that HOPE was badly manufactured and it was going to fall apart.

But when people found out it was made by Tallix, which is the No. 1 foundry in the world, and, in fact, our friend Morgan and Simon are making it at MILGO, which is basically a furniture producer and architectural -- they don't really get

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M. McKenzie

involved in art the way Tallix does. It made him look like a liar, which is basically what he is.

Q. Anything else?

A. There are a million things. I mean, how long do you have. Do you have enough yet?

Q. Well, I'm asking if there's anything else that -- specifically, that you want to point to regarding Morgan and Salama.

A. Yeah. In 2011, after Bob was complaining so much about Simon and Morgan and he was telling me that here he is working with these people 15 years, whatever it is, and he's supposed to get four accountings a year, he has none. And that he knows they're ripping him off and, you know, things happen that he has no idea how it happened, and he needs a lawyer to sue him.

I said, I -- he even wanted me to sue him. I said, Look, I don't have the grievance that you have. If you're being ripped off, I can't sue them because you're being ripped off. You have to do that.

M. McKenzie

And he said, Do you know a lawyer?

And I actually brought two lawyers up there who said to him, You know what, we've looked through every document we have -- you have. There is one accounting in 12 years, and that accounting comes from ARS, not from Morgan, and all it is for tchotchkes and licensing crap. There isn't so much as a dime accounted for for Love, and you have a whole book shelf showing how many times Love has been sold over and over and over again, and you've got nothing for it.

And he said, Well, Simon says every time it sells it's not from them. It's a resale and they're buying it back and they're losing money every year.

And I said, You believe that.

And he said, No. That's why the lawyers are here.

Q. You, I think, acknowledge, and I know you have previously, that Morgan Art owns the rights to Love, correct?

A. I don't know if you can use this word, bull, you know what the back end word

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1 M. McKenzie
2 is. Love is in public domain. When I did
3 the project with Robert Indiana in 1994, Book
4 of Love, I had Eric Emanuel behind --
5 E-M-A-N-U-E-L. Eric's address, One Wall
6 Street, the penthouse. He was the biggest --
7 (Reporter clarification.)

8 A. He was the king of the IPO, one of
9 my best friends. He wanted to do Love and
10 take it all over the place. He researched it
11 with lawyers, on lawyers, on lawyers.

12 And they said, Mike, it's in public
13 domain. There are people making whistles and
14 bells and T shirts for years, and Indiana
15 never filed a copyright.

16 So Morgan's rights to Love is a
17 joke, and they're going to go to hell and
18 jail for licensing something that they know
19 they couldn't license. That's what's going
20 to go down, so brace yourself.

21 Q. Are you aware that there's a
22 contract from 1999 regarding their rights to
23 Love? Regardless of what you think about
24 public domain and everything forward looking,
25 I understand your view.

1 M. McKenzie

2 A. Right.

3 Q. I'm just asking: You are --

4 A. Yeah.

5 Q. -- of course, aware that there are
6 contracts?

7 A. Indiana applied for a copyright in
8 1973. He got turned down.

9 Q. That's not my question. Not my
10 question. I'm asking a yes or no question.

11 You're aware that there's a
12 contract in place regarding Love, whether you
13 think it's viable or whether it's binding,
14 you're aware that there's a contract?

15 A. Yes. And that contract only says
16 what he owns, and he didn't own any rights to
17 Love. And he knew that and so did they
18 because you can go over on Google for 15
19 seconds and you're going to find out who owns
20 Love. It's called all the people in the
21 world. It's free.

22 Q. And you were aware of that contract
23 after you became reintegrated with Indiana in
24 the 2000s, right? You knew that they had
25 that contract. You just didn't believe it to

1 M. McKenzie

2 be viable, is that your position?

3 A. You can take that contract and wipe
4 your butt with it, because it had no validity
5 whatsoever on Love. Simon knew that. Morgan
6 knows that. I'm sure you know that. I'm
7 sure Nikas knows that. Everyone in the world
8 knows that, and everyone has seen -- there
9 are at least 1000 people making Love before
10 Morgan ever touched it. Morgan has no rights
11 to Love. They're liars.

12 Q. Sir, sir, I'm going to give you as
13 much time as you need over the next couple of
14 days to tell me anything that you want to
15 tell me it seems. But I do need some
16 questions just answered specifically, the
17 question I'm asking and an answer, or we
18 can't really conduct a deposition. And then
19 I'm happy to hear your thoughts and views.

20 But the question is just simply
21 this: Whether you think the contract is
22 binding or not or where you want anybody to
23 wipe it, you were aware of the contract when
24 you were working with Indiana, correct?

25 A. I never saw that contract until

1 M. McKenzie

2 this lawsuit came up. And when I saw it, it
3 was like, You're kidding.

4 Q. But aware of its existence. I
5 didn't ask you whether you saw it.

6 You were aware of its existence?

7 A. I was unaware of its existence.

8 Q. When did you first become aware of
9 its existence, according to you?

10 A. I just told you five seconds ago.

11 I told you the first time I saw
12 that contract was during this lawsuit.

13 Q. Not my question. Not my question.

14 My question was: When did you
15 first become aware of a contract?

16 A. During this litigation. That's the
17 first time I became aware of it.

18 Q. Never knew -- you had no idea,
19 never heard, not aware of any contract
20 between Morgan and Salama and Indiana until
21 this litigation started, is that your
22 position?

23 A. That's my position. I didn't know
24 there was any kind of contract. Indiana
25 never referred to it.

EXHIBIT D - 9

1 M. McKenzie
2 He said, Simon thinks he owns it.
3 That's what he would say.
4 Q. Did Indiana ever say anything
5 negative about you?
6 A. He said negative about everybody.
7 I'm sure if he knew you, he would say
8 negative about you, too.
9 Q. We're talking about you today.
10 So I'm asking: Are you aware of
11 whether or not he said anything negative
12 about you?
13 A. I'm not really aware of that.
14 Other than when Simon pressured him and tried
15 to get him to say negative things about me,
16 because Bob doesn't like pressure so when
17 Simon goes in with his son and two other
18 people and pressures him, I'm sure he would
19 say anything because he wants him off the
20 island.
21 Q. Did you ever hear Bob ever say
22 anything negative about you?
23 A. No. Not to my face.
24 Q. Did anybody ever tell you Bob said
25 something negative about you?

1 M. McKenzie
2 A. Sure.
3 Q. What kinds of things?
4 A. He would say I'm too ambitious. I
5 don't know if that's negative. That was what
6 he said the most.
7 Q. Anything else?
8 A. I know everything about pop art and
9 how did that happen. He would say that about
10 me all the time, because he couldn't
11 understand how somebody 30 years younger than
12 him, like 25 years younger than him, knew
13 more about pop art than he did.
14 Q. Anything else?
15 A. I don't know. I don't know
16 anything else.
17 Q. You said that Bob didn't do well
18 under pressure.
19 Did that become an increasing
20 concern as he got older?
21 A. No. I know Bob since 1971 fairly
22 well. He was the same exact way in 1971 as
23 he was in 2018. In terms of his temperament,
24 he enjoyed needling people. It's who he is,
25 you know. I don't see any -- I didn't see

1 M. McKenzie
2 any real change in his personality over the
3 course of 50 years.
4 Q. Mr. Thomas took over being his sort
5 of personal assistant, representative in May
6 of 2016, does that sound about right?
7 A. Yes. I remember hearing about
8 that, and then I remember when I went up,
9 there, seeing him there.
10 Q. While his personality,
11 Mr. Indiana's that is, may have remained
12 consistent, you would agree that his health
13 was not the same in his 80s as it was in his
14 50s, right?
15 A. Yes. And I think that's true of
16 everyone.
17 Q. By the time, you know, 2016, 2017
18 are rolling around, he's having trouble with
19 his eyesight, correct?
20 A. Not in 2017. He was pretty sharp
21 then. 2018, both his hearing and his
22 eyesight was going down, but the woman from
23 the Vinal Medical Society was in there every
24 week, and she had the same report just about
25 every week, is that his health was failing,

1 M. McKenzie
2 but that his brain and his personality was
3 100 percent intact, and that was the same way
4 I felt.
5 Q. Was he, you know, frail and
6 lethargic as the years went on, 2017, 2018?
7 A. Not lethargic. Frail. Lethargic
8 is a different adjective that you're throwing
9 in contrary to all the known facts.
10 Q. Okay. Thanks for telling me that.
11 When you say "frail," what do you
12 mean by that?
13 A. Losing weight, you know, typical,
14 every -- just about everyone in the world who
15 is 88, 89 years old gets a little frail, and
16 they're not ready for the marathon. You
17 know, it's just -- it's human nature. It's
18 the way it goes. You know, considering he
19 was a guy that drank and smoked most of his
20 life from the age of 12 and was adopted and
21 had a pretty tough childhood, he had a pretty
22 good run.
23 Q. Did his frailness have any impact
24 on his ability to make art?
25 A. Well, like every other artist who's

1 M. McKenzie
2 89 years old, he relies on his studio, and he
3 directs the activities. His brain was still
4 going fine, so directing the activity is
5 where it's at, just like every other artist,
6 Rauschenberg, Warhol, you pick them. You
7 know, they direct the studio to do things.
8 Lichtenstein was doing a mural, he had 18
9 people drawing it for him, but it was his
10 idea.

11 Q. In that time period, again, I'm
12 talking 2016, 2017, 2018, can you sort of
13 describe to me how it would work, how Indiana
14 would authorize work, and how you all would
15 then make it come to fruition?

16 A. We would sit down with him, Jamie
17 and I, and we'd say, Listen, you know, what
18 are we going to do next?

19 And sometimes he would direct it,
20 and say, You know what I haven't done in a
21 long time?

22 What?

23 I haven't done he and she. Do you
24 know those words?

25 And I had never seen those words,

1 M. McKenzie
2 so he pointed them out.

3 And I said, This is great. Let's
4 do it.

5 In other cases, either Jamie or I
6 would sit down and say, Bob, what do you
7 think of doing something else?

8 And sometimes he'd say no for no
9 reason, whatsoever.

10 We were like, You don't want to do
11 American Dream?

12 And he would say, Nah, I don't want
13 to do it.

14 All right. So we won't do it.

15 So he was in the command chair. We
16 were just following the orders. That's
17 kind of the way it is. I mean, we gave
18 suggestions just like a lieutenant would
19 give a suggestion to a general, but the
20 general doesn't have to follow it
21 because it's his ship. That's the way
22 it works. So we followed that protocol.

23 Jamie sometimes could overrule him.
24 I couldn't. You know, Jamie really had
25 the power to overrule him. I don't

EXHIBIT D - 10

1 M. McKenzie

2 remember if he ever did. I don't think
3 Jamie liked overruling. Jamie was --
4 Jamie had been his assistant in the
5 '90s, so he was really so used to being
6 a worker there so that he didn't really
7 feel the love to overrule Bob.

8 Q. How did that work, how did he have
9 the authority to overrule Bob, can you just
10 explain that to me?

11 A. Well, he was the -- first of all,
12 Bob's best friend, and Bob brought that up a
13 hundred times. So best friends have the
14 right to say stuff to you, and I didn't quite
15 have that right. He was also the POA, and as
16 a lawyer I'm sure you know what that means.
17 So, in truth, he was -- in many ways he was
18 Bob, right? That's how it works.

19 Bob appointed him as POA. And my
20 understanding is when he did it, he wanted it
21 to be so solid that he called the video
22 conference and brought in seven or eight
23 witnesses and one or two videographers and a
24 photographer, so that all the questions that
25 he got asked would be adhered by -- I don't

1 M. McKenzie

2 know exactly who was there, some medical
3 person, is my understanding, maybe two
4 attorneys, or Brannan may have been there for
5 all I know. Nurses were there.

6 So, you know, that's how Jamie got
7 appointed. I had nothing do with it. I
8 wasn't there.

9 Q. You were describing one setting in
10 which it's the three of you in a room
11 together.

12 What about times in which Jamie
13 directly authorized you to do something on
14 Indiana's behalf when Indiana wasn't present,
15 did those things occur as well?

16 A. Well, those were suggestions. He
17 wasn't telling me to do it. He was --
18 sometimes -- like at one point after we did
19 WINE and we were kind of excited because we
20 were working on it for seven years before we
21 got it to go, and Bob finally -- we finally
22 had a bite on somebody wanting to do WINE.

23 We had this wine magazine that was
24 interested in doing -- we had a couple of
25 wine companies that were interested. At one

1 M. McKenzie

2 point, Moët & Chandon was interested in
3 Indiana doing -- M-O-E-T, and it was getting
4 exciting. And Jamie went off a little too
5 far on the excitement and starting sending
6 emails of all the other languages that mean
7 WINE. I'm like, Dude, let's get WINE out
8 first before we start doing WINE in Polish or
9 whatever hell he wanted to do.

10 Q. Was it your position that if Jamie
11 told you that something was authorized not in
12 Indiana's presence, that Jamie could
13 authorize something on Indiana's behalf, yes
14 or no?

15 A. That was my understanding. I don't
16 know if we ever did anything that way. It
17 almost always seemed to go through Bob
18 anyway. But my understanding was that Jamie
19 had the authority as POA to authorize
20 anything on Bob's behalf.

21 Q. You mentioned earlier that one of
22 your grievances with Morgan Arts is that they
23 had made statements that you believed to not
24 be true about you.

25 Can you point to any evidence that

1 M. McKenzie

2 MAF, Morgan Art Foundation, falsely told
3 Contini Art Gallery that AIA was forging HOPE
4 artworks? Do you have any evidence of that?

5 A. I have evidence that he was going
6 to other galleries. Specifically one that he
7 was going to all the time was Oppen Gallery
8 where he was going to them and badmouthing
9 HOPE every day, calling them up, stopping in,
10 harassing the staff. I have plenty of
11 evidence of that, yes.

12 Contini was something that I heard
13 third hand through Rosenbaum, who was dealing
14 with Contini. I had no contact with Contini.
15 He told me that after the opening or shortly
16 thereafter, one of the Salama-Caros slithered
17 in and started making bad references about
18 HOPE. At the beginning, he was telling
19 people that HOPE was -- that Bob didn't even
20 know about it. And then, of course, The
21 Today Show came out, and Bob was saying, I
22 want to bring HOPE all over the world.
23 That's kind of like fuck that...

24 Q. Has anybody ever said to you, One
25 small set of questions now, for which I need

EXHIBIT D - 11

1 M. McKenzie

2 simple yes or no answers, not long responses
3 or explanations, has anybody ever said that
4 you to, or words to that effect?

5 A. No.

6 Q. No one's ever told you that rather
7 than answering a question you're giving long
8 responses that aren't answering the specific
9 question, no one's ever said that to you?

10 A. I'm answering your questions
11 insofar as I can. I don't know what you
12 want.

13 Q. That's --

14 A. I can't answer everything yes and
15 no. Maybe you can. I don't live my life
16 that way.

17 Q. That's not my question. My
18 question is: Has anyone ever told you, not
19 today, at any point, that you're not
20 answering questions directly. You're giving
21 long not-answering answers.

22 Has anybody ever told you that?

23 A. I told you no. The answer is no.
24 Now you have a no answer, N-O. No means no.
25 You can ask me five more times. No will

1 M. McKenzie

2 still mean no. You can get a dictionary and
3 look up no.

4 Q. Do you have any other evidence that
5 MAF falsely told Contini Art Gallery,
6 specifically Contini Art Gallery, that AIA
7 ways forging HOPE artworks, do you have any
8 other evidence?

9 A. Apparently, Rosenbaum has all that
10 evidence, R-O-S-E-N-B-A-U-M.

11 Q. Not my question.

12 Do you, sir, have any evidence?

13 A. I have it only through Rosenbaum.

14 Q. Can you point to any evidence, you,
15 any evidence that MAF caused the publication
16 of false claims in an August 1, 2018 New York
17 Times article?

18 A. Yes. I told you --

19 Q. What evidence can you provide?

20 A. Among other things, saying that
21 Jamie Thomas was essentially a thief and
22 criminally negligent homicide. It was
23 obvious that there was no grounds for that,
24 tying that to me, and trying to pretend that
25 Jamie and I had some kind of cabella going on

1 M. McKenzie

2 is also a complete and utter lie.

3 And if anyone had even spent ten
4 seconds going to the island of Vinalhaven and
5 talked to anyone there, they would have known
6 that all of those allegations were lies.

7 They were fabricated by Mr. Nikas, who also
8 claimed he was trying to save Robert
9 Indiana's life. He never met Robert Indiana.
10 How was he saving his life. So all of these
11 things, to me, are all just lies, L-I-E-S.

12 Q. Do you have specific statements
13 that anybody made about you related to this
14 that you believed to be false and defamatory?

15 A. The entire New York Times statement
16 was a false lie that Mr. Nikas conned people
17 into believing with absolutely no evidence of
18 any kind.

19 Q. I'm asking you, sir, for a specific
20 statement that you are telling me that is
21 false and defamatory, a specific statement.

22 A. I told you, the statement that
23 Jamie Thomas was a killer was a lie. The
24 statement that I was a forger was a lie. The
25 statement that the two of us worked together

1 M. McKenzie

2 to keep -- whatever his name is -- Simon
3 Salama-Caro, if that's his real name, which
4 we're not sure, to keep him off of the
5 island, that's a lie.

6 Bob did not want to see him. He
7 told me that. He told Sean that. He told
8 Jamie that. He told other people that.
9 We're not the ones making the decision
10 whether or not Simon goes on the island or
11 doesn't go on the island. To me, I don't
12 care if Simon swims to the island, goes to
13 the island, flies to the island. That has
14 nothing to do with me. I don't control the
15 island. I don't -- I never controlled Bob.
16 No one ever did. Bob is his own man.

17 So all these stories about Bob
18 being feeble, or whatever the hell you're
19 talking about, it's not confirmed. And the
20 only things that are confirmed is that he
21 wasn't losing his mind. He was totally
22 strong, and knew what was going on. He was
23 still funny, still arrogant. That's
24 confirmed week by week right up until the
25 time he dropped dead.

EXHIBIT D - 12

1 M. McKenzie

2 Q. The New York Times article, it
3 doesn't quote Morgan Art Foundation, does it?

4 A. It quotes Nikas, doesn't it?

5 Q. Right. But I'm asking a different
6 question.

7 A. Okay.

8 Q. Okay. Try to listen -- sir, try to
9 listen to my questions, rather than just
10 answering what you want to say. I'm asking
11 you --

12 MR. MARKHAM: Don't lecture my
13 client.

14 MR. SPIRO: If he doesn't answer a
15 single question that I'm asking, then
16 we're going to do another deposition.
17 So he needs to answer the questions.
18 This isn't just a soap box and speech.

19 MR. MARKHAM: He's answering.

20 Q. Morgan Art Foundation, are they
21 quoted in the article in the New York Times,
22 yes or no?

23 A. Their lawyer is quoted, same thing
24 to me, yes.

25 Q. And when you say that MAF caused

1 M. McKenzie

2 the publication of this article, can you
3 explain to me what evidence you have that
4 they caused the publication of that article?

5 A. According to Mr. Brahmin(phonetic)
6 who wrote the article, he was contacted by
7 people from whatever that office is, Quinn
8 Emanuel, Nikas, whoever they are.

9 Q. Who told you that?

10 A. Brahmin.

11 Q. How did he tell you that, on the
12 phone, in an email?

13 A. On the phone.

14 Q. Do you have any other evidence that
15 Morgan or Quinn Emanuel on Morgan's behalf
16 caused the publication of that article?

17 A. I'd say the author is pretty good
18 evidence.

19 Q. Also, again, going back to the
20 Contini Art Gallery claim that American Image
21 was forging HOPE contract artworks that
22 Indiana authorized, what artworks are you
23 referring to there?

24 A. I think you misread your own
25 question. Try it again.

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EXHIBIT D - 13

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1 M. McKenzie
 2 Q. What artworks are being referred to
 3 in that, according to you?
 4 A. What's the question, though? What
 5 artworks being referred to as where? You
 6 just said --
 7 Q. Your claim is that you were
 8 defamed, right?
 9 A. Right.
 10 Q. By Contini Art Gallery?
 11 A. I'm not -- I'm defamed by Contini
 12 Art Gallery, is that what you're --
 13 Q. That you were defamed to -- that
 14 somebody defamed you to the gallery, that
 15 somebody said a false statement about you to
 16 the gallery, is that your --
 17 A. That's coming from Rosenbaum, that
 18 was the sales force for me, and they told me
 19 that they were setting up deals with Contini
 20 and it happened several times in Europe, as
 21 well as in America, that either Simon or his
 22 son, Mark, or possibly his other son, Paul,
 23 had gone into the galleries, and said that at
 24 the beginning Bob didn't know about HOPE.
 25 Then it was, after it was on The Today Show,

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1 M. McKenzie
 2 and it was kind of ridiculous that 21 million
 3 people witnessed Indiana saying he wanted to
 4 bring HOPE around the world. They then said
 5 that it was badly made, and it was going to
 6 fall apart in your backyard.
 7 Q. And who from Morgan made those
 8 statements, you're saying both?
 9 A. Both.
 10 Q. And to whom at Contini?
 11 A. I don't -- like I said, this is
 12 coming through Rosenbaum. You'd have to ask
 13 them.
 14 Q. And do you know when those
 15 statements were made?
 16 A. During the Contini show.
 17 Q. Do you know where those statements
 18 were made?
 19 A. In Italy.
 20 Q. Do you know whether they were made
 21 in person, in writing?
 22 A. I don't know. I'm only getting it
 23 from Rosenbaum, who is asking me to go to
 24 Indiana and tell him to talk to Simon and
 25 tell him to stop bad-mouthing our business.

1 M. McKenzie
 2 Q. And, according to you, Mr. Indiana
 3 also disparaged Morgan Art Foundation,
 4 correct?
 5 A. All the time.
 6 Q. Can you give me specific statements
 7 that he made?
 8 A. I believe I told you that he told
 9 me that he wasn't getting any of his
 10 statements, and he was supposed to get four a
 11 year accountings. And this was about in 2011
 12 and, I guess, the contract began -- you know,
 13 I didn't have access to that material. I was
 14 only going by what he told me, but he told me
 15 that he was missing at least 40 statements,
 16 and he only got one.
 17 And when he gave me the statement,
 18 it was obviously a statement not from Morgan.
 19 It was only a statement from ARS. I didn't
 20 even know what it was.
 21 I said, Who is this?
 22 He said, It's some kind of
 23 licensing thing that Simon set up.
 24 So all that stuff that was done
 25 through ARS apparently Indiana had no idea it

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1 M. McKenzie
 2 was evening happening or what it was.
 3 And I was like, Well, how could you
 4 not have -- you know, you see what my
 5 accounting looks like. It shows you line by
 6 line of what we sold, what we sold it for,
 7 what we got, and what your percentage is.
 8 That's a normal accounting that I get from
 9 companies for all my books every quarter.
 10 That's the way it works.
 11 So he said, I've never gotten
 12 anything like this from Morgan.
 13 And then I remember saying to him,
 14 Well, who you do know from Morgan?
 15 He said, The only one I've ever met
 16 was Simon.
 17 And I'm like, That's ridiculous.
 18 Simon is like -- he's some -- whatever he is.
 19 We don't even know what he is. So how are
 20 you dealing with a company like this for this
 21 many years. You've never met anyone from the
 22 company. You've been working with me for
 23 three years, and you've met everybody that
 24 works with me. They all come up to
 25 Vinalhaven. They stay. They come over. They

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1 M. McKenzie
2 help you. They help me. You've been down to
3 my place. You stayed at my house.

4 It's normal what goes on, if you're
5 going to do business with somebody. You get
6 to meet their employees, who they work with
7 and why. I found it really wrong. And then
8 when we tried to research Morgan, can't find
9 anything about -- nothing. They moved from
10 one LLC to another LLC.

11 And then Post Office boxes, we
12 finally found an address for Robert Gore who
13 apparently 11 Keates Place, I believe it was.
14 We sent somebody over to knock on his door to
15 say, Listen, we're publishing Indiana.
16 You're publishing Indiana. Why don't we work
17 together, you know, we may have some clients
18 that you could use, and you may have some
19 clients that we could use.

20 Knocked on the door of what was
21 given as the Morgan Art Foundation's address,
22 11 Keates Place. Answered the door. Never
23 heard of Morgan Art Foundation. And that was
24 Robert Gore who apparently was then a CEO and
25 also apparently is the guy who ripped off the

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1 M. McKenzie
2 Panama Papers guys that do the money
3 laundering.
4 And Mr. Gore is listed for having
5 looked up many other people, and, frankly, I
6 never heard of the Panama Papers. I didn't
7 even know what it was until this case, and
8 now I know exactly what it is and we were
9 able to -- and I met with the FBI, by the
10 way, and they informed me what it was. So I
11 have a pretty good idea of how the Panama
12 Papers were worked on.

13 Q. Are you done with the answer?

14 A. Yeah.

15 Q. Has everybody ever said to you in
16 writing, Dear Michael, what we are doing is
17 waiting for you to respond in a concise,
18 accurate, consistent manner to our wholly
19 reasonable, cogent, simple questions from the
20 other day, anybody ever said anything to you
21 like that?

22 A. No, and being accused of that by a
23 moron kind of makes me a little upset.

24 Q. No one's ever said that to you
25 before?

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EXHIBIT D - 14

1 M. McKenzie

2 A. No, and I have done depositions
3 before, too, and taken depositions before as
4 well.

5 Q. What do you mean, "taken"?

6 A. Giving a --

7 Q. That you've been the one asking the
8 questions?

9 A. No, I've been the one who's --
10 whatever it is, I'm taking the deposition
11 with you right now, right?

12 Q. I just wanted to clarify what you
13 meant.

14 So Mr. Indiana told you that there
15 was supposed to be four times a year under
16 the contract an accounting of the monies
17 owed, is that right?

18 A. That's right.

19 Q. And do you have any firsthand
20 knowledge -- again, please listen to my
21 question.

22 Do you have any firsthand knowledge
23 of whether or not there was four-times-a-year
24 accounting or accounting done between Morgan
25 Art Foundation or Indiana's representatives?

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1 M. McKenzie

2 A. Yes. I brought up a fellow named
3 Jeffrey Robinson, who's an attorney, and
4 Mark -- I can't remember Mark's last name,
5 who came up, and Indiana gave them access to
6 all of his records. They stayed there for, I
7 think, three days. They went through
8 everything.

9 And they said to Bob, We find
10 absolutely no records of any -- and Bob said,
11 That's what I told you. There were no
12 records.

13 And they said, What you should do,
14 Mr. Indiana, is you should go before the
15 judge, tell the nice judge that you have a
16 contract, and that you're supposed to get
17 four accountings a year, and 11 or 12 years
18 into it you have none, and the only one you
19 got has nothing to do with any of the art
20 sales. It has something to do with things
21 that you didn't even realize were going on.

22 And for some reason he got talked
23 out of it, I assume, by Salama. So, yes,
24 that was my pretty obvious (inaudible).

25 Q. All right. You're being told that

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1 M. McKenzie

2 by somebody else.

3 I'm asking: Have you personally
4 reviewed any records that show infrequent
5 payments or infrequent accounting?

6 A. Because I was sitting there with
7 Bob and the two attorneys who were going
8 through everything, looking for if there was
9 anything and we found nothing. And unless
10 Bob hid everything, which I doubt because he
11 was the one who was trying to get a lawyer to
12 sue Simon and Morgan, I don't see why he
13 would be hiding the evidence.

14 Q. When was the first time that
15 Indiana told you that Morgan was not making
16 frequent payments and accounting under the
17 Love contract?

18 A. Probably a year into doing the HOPE
19 work. He started complaining about it
20 basically every time I went up there. It
21 wouldn't matter if I said, Let's go have
22 lunch. Somehow he shifted the talk to,
23 Simon's ripping me off.

24 Q. Is this approximately then 2007?

25 A. No, 2009.

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1 M. McKenzie

2 Q. 2009. And is there any other --
3 was anybody present during those
4 conversations?

5 A. Sure. You know, he was bitching
6 and moaning about Simon and Morgan to anybody
7 who would listen.

8 Q. Can you tell me --

9 A. I think everyone who --

10 Q. Can you tell me who was present
11 during those conversations?

12 A. Sean Hillgrove, Frank -- I can't
13 remember his last name. Bow. Later on --
14 what was the name -- the secretary, I can't
15 remember her name, who worked at the library.

16 And also Melissa Hamilton who said,
17 Simon is the worst person you could possibly
18 know. He pretends to be your friend, gets
19 into your house and steals everything you
20 own.

21 I was like, Wow, that's a lot of
22 lying.

23 So those were the people that were
24 present, that I can remember, in addition to
25 the two attorneys.

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EXHIBIT D - 15

1 M. McKenzie

2 Q. Any other statements that you
3 haven't told us about to date that Indiana
4 made disparaging Morgan Art?

5 A. Like I said, it happened -- I was
6 up there twice a month for 10 years, and it
7 happened basically every time I went there.
8 It would always be one thing after the next.

9 He'd pull out the Sotheby's
10 catalogue and say, Look, they just sold the
11 sculpture for X million dollars, and I'm
12 getting nothing.

13 And I'm like, Whatever, I don't
14 know.

15 He was constantly jarring me to try
16 to do something about it.

17 I said, It's your case. I can't
18 sue somebody for what they did to somebody
19 else. I can't have some -- I can't do that.
20 You've got to do it.

21 Q. Which assistant claimed that MAF
22 wasn't paying?

23 A. All the ones I just told you.

24 Q. Did anything happen after this
25 meeting, and what you described with Raymond

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1 M. McKenzie

2 Robinson, was there any outcome?

3 A. No. Bob was afraid to go to court.
4 He didn't want to have to go to court.

5 They explained to him, You may be
6 able to do it through us, and not go to
7 court.

8 But he didn't want to get involved
9 in going to court.

10 Q. For any reason?

11 A. For any reason.

12 Q. Though, if he had a problem with
13 you, if you were stealing with him, he
14 wouldn't want to go to court either, is that
15 your view?

16 A. The difference is I don't steal
17 from him.

18 Q. You assert that Morgan doesn't have
19 a phone number, address, email, or website,
20 that they're just a simple group of criminals
21 using Indiana to launder dirty money with art
22 sales.

23 Did you make that statement?

24 A. It seems to be the way it is.

25 Q. Do you have any evidence of that?

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1 M. McKenzie

2 A. Well, they were trying to do a show
3 with Indiana. Frank Verpoorten was trying to
4 do a show. He was the director of the museum
5 in Naples. He had a full staff of research
6 assistants, tech people and everything else.
7 They spent almost six months trying to locate
8 anybody from Morgan, and they couldn't find
9 anything. And if you go online and look for
10 Morgan, you don't find anything. And --

11 Q. Do you have any other evidence that
12 supports that statement?

13 MR. MARKHAM: Excuse me. He had
14 not finished his answer. His last word
15 was "And."

16 MR. SPIRO: But his answers go on
17 and on and on and they're never
18 responsive, so it's hard to know when
19 they're going to stop or not.

20 MR. MARKHAM: I don't want to argue
21 with you. I want you to let him finish.
22 You asked a very open-ended question
23 about what evidence he had, and he was
24 in the process of giving you what he
25 believed his evidence was. His last

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1 M. McKenzie

2 word was "and." Questions -- answers
3 don't end on "and."

4 MR. SPIRO: Well, sometimes they
5 do, actually.

6 Q. But in any event, you can continue,
7 sir, if you want to continue to speak.

8 A. It was unlimited bad faith things
9 on Morgan. You couldn't find anything about
10 them. Someone is trying to do a show, you
11 can't contact them, and they finally get a
12 contact with Paul Kasman. Paul Kasman says
13 he can't do anything. That's beyond fishy.

14 When you research Morgan, as we
15 have over the years, you see it morphing from
16 one P.O. Box to another P.O. Box to another
17 LLC. We know that their beginning -- their
18 beginning, the man who funded Morgan was a
19 fellow named Naggar, Guy Naggar, N-A-G-G-A-R.
20 He apparently was taken down for pyramid
21 scams similar to Bernie Madoff. I mean,
22 there are so many things. And Bob constantly
23 was coming up with how he was ripped off and
24 why, so many times that if I started to
25 recite every time he told me, we would be

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EXHIBIT D - 16

1 M. McKenzie

2 here for a month.

3 Q. What evidence do you have that the
4 Salamas are criminals?

5 A. They're not the Salamas. They're
6 Salama-Caro. So you might as well know the
7 name. I'm saying --

8 Q. What evidence do you have that
9 they're criminals?

10 A. Look up Shearbrook, which is the
11 company that they use to go back and forth
12 and dodge all their payments to our friend
13 Robert Indiana. And I met with Simon who
14 claimed that the Morgan headquarters was at
15 420 Lexington Avenue. I met with him at
16 420 Lexington Avenue. He told me that Morgan
17 made their art foundation there because it
18 was proximity to Kennedy Airport, which is so
19 ridiculous, it's not even funny. I mean, I
20 grew up a couple of blocks from there. I
21 know what it is.

22 And we're meeting in what is
23 obviously an accountant's office, and he's
24 trying to convince me that all the offices
25 there are his sales force, so on and on.

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1 M. McKenzie

2 There were just -- I can't forget the
3 combination to Brian Ramnarine and the
4 Shearbrook thing at 420 Lexington Avenue,
5 which also was a joke.

6 So the whole thing, you know, they
7 were just flipping one story to another with
8 their different companies, blah, blah, blah.
9 It's not a good thing.

10 Q. Did you ever run background checks
11 or have background checks run on them?

12 A. I have.

13 Q. And did you find any criminal
14 history?

15 A. No, but I find that everything that
16 happens on the internet, they obviously are
17 paying people to take it off after it
18 happens.

19 Q. All right. But you understand that
20 people that write bad things on the internet
21 is different than being a criminal, right?

22 A. Yeah. I didn't really say that
23 they were criminals. I said that Morgan are
24 criminals. Anybody that's taking --
25 laundering money, my understanding, and so is

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1 M. McKenzie

2 the FBI's, that's a crime. And I'm sure
3 they're being monitoring, and I'm sure
4 eventually they'll be caught.

5 Q. And what evidence did you have that
6 they're laundering money?

7 A. The FBI report of the Panama Papers
8 makes it pretty obvious. And when you then
9 do background on Mr. Gore, who apparently set
10 up their money laundering, he has apparently
11 does money laundering as a professional.
12 He's a -- that's what he apparently does.
13 He's a well, well documented guy on the
14 Panama Papers. The Panama Papers are not
15 some fiction of somebody on the internet.
16 It's an FBI organization, which makes
17 (inaudible).

18 Q. Any other evidence? Do you have
19 any other evidence to share?

20 A. No. That was enough for me, the
21 FBI telling me that.

22 Q. You were quoted in May of 2018
23 saying the following to the Portland Press
24 Herald: They, meaning Morgan Art Foundation,
25 haven't paid Bob in seven years.

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1 M. McKenzie

2 A. Yes.

3 Q. You made that statement?

4 A. I did.

5 Q. What evidence did you have to make
6 that statement?

7 A. Jamie Thomas told me he went
8 through all the books, and they hadn't
9 received a dime from Morgan in seven years.

10 Q. Did you do anything to corroborate
11 Jamie Thomas' account?

12 A. No. I trusted Jamie. He seemed
13 like an honest guy, and he was working with
14 Bob directly and Bob hired him directly, and
15 said he was the only person in the world that
16 he -- on the island that he trusted.

17 Q. And Bob paid Mr. Thomas, correct?

18 A. Yes.

19 Q. And what was Mr. Thomas's wages, if
20 you know?

21 A. I have no idea.

22 Q. And any gifts, that you know of,
23 that Bob ever gave Mr. Thomas?

24 A. Yeah. I watched Bob give Thomas
25 stuff time and time again, but he gave away

EXHIBIT D - 17

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1 M. McKenzie

2 gifts to a lot of people. All the people
3 that worked for him were given things. And
4 Jamie was the guy that was there, you know,
5 wiping his butt, 24 hours a day sometimes, so
6 I wasn't -- one time I remember there was a
7 leak in the roof, and Jamie found a bunch of
8 things soaked wet.

9 And Bob said, Throw them away.

10 And Jamie said, These are
11 interesting documents.

12 And he said, You take them.

13 So that's -- there was a box. Some
14 of them were signed. Some of them weren't.
15 So Bob gave away art like it was paper
16 towels. He gave things to Melissa Thomas --
17 Melissa Hamilton. I remember going to her
18 house. And I'm like, Holy -- the whole house
19 was Indiana paintings.

20 Q. Thinking specifically of
21 Mr. Indiana's home in the period 2016, 2017
22 and 2018, what was the condition of the home?

23 A. Well, the first time I went there
24 was 1977, the condition --

25 Q. Let me stop you for a second. I'm

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1 M. McKenzie

2 only asking you about 2016, 2017, 2018. My
3 question was very clear. I need you to
4 answer my question, which is what was the
5 condition of the home during that time
6 period?

7 A. The same as it was before, a wreck.

8 Q. Rodents?

9 A. I don't remember seeing any
10 rodents, but I wouldn't doubt it.

11 Q. Feces?

12 A. Who?

13 Q. Feces.

14 A. Everywhere. He had dogs and cats
15 he let run wild. I watched him take a dump
16 on portfolios that I spent three years
17 making.

18 Q. It was in a dilapidated condition,
19 agreed?

20 A. It had been since the day he bought
21 it.

22 Q. Rain coming through the roof, water
23 leakage?

24 A. Yes. He refused to let anybody fix
25 the roof. I sent people there several times,

1 M. McKenzie

2 begging to let me to pay for it to fix the
3 roof. He said no.

4 Q. New York Times, Mr. McKenzie
5 accused the Morgan company of falsely
6 suggesting it represents Mr. Indiana, and
7 avoiding any agreement with him by failing to
8 make required royalty payments, both charges
9 that the company denied.

10 Do you remember saying that to the
11 paper?

12 A. Yes.

13 Q. And how did you communicate that to
14 the paper?

15 A. I don't remember. I actually don't
16 remember saying it, but that's what I would
17 say.

18 Q. And was there any evidence that you
19 had at the time of making that statement in
20 May of 2018 --

21 A. Unlimited --

22 Q. -- that you haven't already told us
23 about?

24 A. There's 1000 other things that
25 Indiana said that were detrimental and bad

1 M. McKenzie

2 about both Simon and Morgan and his son.
3 And, like I said, if I went over every one,
4 we'll be here until Saturday. But I think
5 we --

6 Q. I'm asking, not about every bad
7 thing. I'm asking about anything specific
8 you can tell us about that specific
9 statement.

10 A. I think you got it. I'm good with
11 what I've said. And you're asking me to go
12 on and on and then you're complaining that I
13 go on and on. So which --

14 Q. Well, I'm complaining when -- to be
15 fair, I'm complaining that you go on and on
16 when I ask you a simple question about a
17 simple time period, that you go on and on and
18 on.

19 If I ask you for all the evidence
20 that you have and your answer is responsive,
21 I'll take any responsive answer you have,
22 just to clarify.

23 A. I disagree. You know, you asked me
24 something you think is a simple question, but
25 you don't know know Robert Indiana or the

EXHIBIT D - 18

1 M. McKenzie

2 circumstances or the house or Jamie Thomas,
3 and those things complicate what you think is
4 a simple question.

5 Q. All right. And has anybody ever
6 said to you in writing, Dear Michael, what we
7 are doing is waiting for you to respond in a
8 concise, accurate, consistent manner to our
9 wholly reasonable, cogent, simple questions
10 from the other day.

11 Did anybody ever say that to you?

12 MR. MARKHAM: You read that before.

13 It's been asked and answered.

14 MR. SPIRO: Noted.

15 Q. Answer my question.

16 A. Asked and answered.

17 Q. Answer my question.

18 A. Answered.

19 Q. You're not going to answer? You
20 refuse to answer my question?

21 A. I answered it. No.

22 Q. No one's ever said that to you
23 before?

24 A. That's right.

25 Q. You're sure of that?

1 M. McKenzie

2 A. 100 percent. Now, are you going to
3 ask me again? You're wasting time.

4 Q. Do you have any information that
5 MAF is connected to drugs?

6 A. The only information I have from
7 the FBI is them telling me that most of the
8 people that they tagged for the Panama Papers
9 are connected either to drugs or guns. So,
10 no, I don't know which one they're connected
11 to, or if it's something else, but, clearly,
12 they're connected to money laundering, and
13 they're connected at the very top to the guy
14 who's the king of money laundering.

15 Q. So that's your evidence that MAF is
16 connected to drugs is that -- your testimony
17 is that the FBI told you that money
18 laundering can sometimes be connected to
19 drugs?

20 A. I just told you the FBI explained
21 what the Panama Papers were to me, because I
22 had no idea what it was, and they in a
23 nutshell said most of it was connected to
24 trying to stop drugs and guns. I don't know
25 anything more about that.

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1 M. McKenzie

2 I can't say whose connected to
3 what, how they got there or why, but the FBI
4 seems pretty sure the Morgan Art Foundation
5 is connected to money laundering, and money
6 laundering is -- money laundering, from what
7 I understand, is mainly connected to guns --
8 smuggling guns, guns sales and drugs and was
9 set up to try to stop those two things.

10 That's my understanding. I'm not a member of
11 the FBI. Members of the FBI explained it to
12 me, and that was what I came out with.

13 Q. In 2018, you told The Conservator
14 that MAF and Simon Salama-Caro do not
15 represent Robert Indiana or his works,
16 correct?

17 A. No. I told The Conservator that
18 neither MAF or Simon Salama-Caro have
19 anything to do with HOPE and them trying to
20 take over the conservation of my work is
21 unacceptable. Different conversation of the
22 question you asked.

23 Q. Did you tell them that they have no
24 authority with respect to Robert Indiana?

25 A. I told them they have no authority

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1 M. McKenzie

2 with respect to HOPE.

3 Q. Do you agree with the statement
4 that they did have authority with respect to
5 Love, correct?

6 MR. MARKHAM: Objection to form.

7 Calls for a legal conclusion.

8 A. I don't know what authority. I
9 told you that everyone has authority to make
10 all the Love they want. I found that out in
11 1994 through Mr. Emanuel, who did an
12 intensive search on it. We were going to
13 launch Love products. He had taken 2800
14 companies public, and his idea was to go to
15 all the companies he took public and get them
16 to do something with Love, and then he found
17 out we couldn't do it because there was no
18 way to copyright it or protect it, so it fell
19 apart.

20 So when they started licensing --
21 when I found out they were licensing Love,
22 which I didn't find out until they dropped
23 those papers with whatever it is, ARS, at
24 their deposition I was like, Are you kidding,
25 I had no idea that was going on. And it's

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EXHIBIT D - 19

1 M. McKenzie

2 really -- brace yourself for that lawsuit.

3 Q. In any of your statements that
4 happened after -- to the media after
5 Mr. Indiana's death, do you share any words
6 of condolence or sadness or tribute to
7 Mr. Indiana, other than the back and forth
8 about who owns what?

9 A. Indiana was one of my best friends.
10 I grew up worshipping him. He was one of the
11 only pop art -- I was involved in pop
12 artists -- pop since the age of 11, and I was
13 also a poet since the age of 7. Indiana was
14 the guy who was the poet of pop. I was
15 totally into him. I was best friends with
16 Warhol.

17 I was upset that Indiana wasn't
18 getting what he was doing. He wasn't making
19 money. I felt that was horrible, and I spent
20 a large part of my life trying to make sure
21 that Indiana got what he wanted, and I cried
22 like a baby when he died. He was -- he
23 taught my daughter how to draw. I mean,
24 Indiana was like my crazy uncle.

25 Q. That wasn't my question. My

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1 M. McKenzie

2 question was: In your many statements to the
3 media following Mr. Indiana's death, did you
4 ever pay tribute to him?

5 A. I have no idea. If they don't ask
6 me that question, I don't know how I inject
7 that. I've told everyone at the media that
8 Indiana was my friend for a very long time.
9 And, frankly, I told people in Portland in
10 Surrogate's Court, if I found out that
11 anybody was really screwing Indiana, I'd drop
12 everything I was doing, so I could punish
13 them.

14 Q. At the end of -- withdrawn.

15 After Mr. Indiana died, the FBI
16 investigated the circumstances of his death,
17 correct?

18 A. That's right. Apparently, from a
19 phone call from Mr. Nikas.

20 Q. And what's your basis of believing
21 that?

22 A. That's what I was told.

23 Q. Told by whom?

24 A. One of the people that were on the
25 island.

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1 M. McKenzie

2 Q. What's that person's name?

3 A. I don't know. I wasn't really
4 asking people's names from the FBI. What was
5 I going to say, Show me your badge.

6 Q. Okay.

7 A. I mean, I've dealt with the FBI
8 many times.

9 Q. So I just want to clarify.

10 An FBI agent told you that the
11 reason they were investigating Mr. Indiana's
12 death was because of a call from Mr. Nikas?

13 A. I think that was pretty
14 well-documented, wasn't it?

15 Q. Do you have a document that shows
16 that?

17 A. That seemed to be how they got
18 there. You know, if you look at the --
19 Mr. Nikas went on board with some law
20 magazine and said that Indiana was basically
21 murdered and he was trying to save his life,
22 which is the biggest lie you could possibly
23 throw out there.

24 He accused Jamie Thomas of being a
25 murderer. You got to be joking me. You

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1 M. McKenzie

2 might want to look up Peter Nygard. Now you
3 know who a murderer is. That's your next
4 client.

5 Q. Do you have any information about
6 the circumstances of Mr. Indiana's death that
7 you could share?

8 A. It's all -- that record is all the
9 Vinalhaven Medical Society. That's all I
10 know. And my understanding is that he died
11 on that Friday and they couldn't get the
12 coroner over to the island until Saturday.
13 That's the only thing I heard.

14 I wasn't there when he died. I was
15 there, you know, before. I was watching him,
16 you know, fade. We kind of like stopped
17 really doing anything new with him when I
18 realized it was just -- even though Jamie
19 could have green lighted it, I didn't do it
20 because I wanted Bob to be involved in it.

21 Q. Do you know whether -- did the FBI
22 ever interview you about the circumstances of
23 Mr. Indiana's death?

24 A. What's that?

25 Q. Did the FBI ever interview you

1 M. McKenzie

2 about the circumstances of Mr. Indiana's
3 death?

4 A. No.

5 Q. Are you aware of whether or not
6 they interviewed Mr. Thomas about the
7 circumstances of Mr. Indiana's death?

8 A. I'm -- I don't know. I would
9 assume they did.

10 Q. Do you know of anybody else that
11 was at the home at the time of Mr. Indiana's
12 death, other than Mr. Thomas?

13 A. Yeah. Apparently, the two nurses.
14 One or both of them were there when he died.
15 I think that the person from Vinalhaven was
16 the one that called up and brought over --
17 she -- I can't remember her name, but she's
18 in charge of the Vinalhaven Medical. It's
19 not a hospital, but they're very concerned
20 with the health of the people on the island.

21 Q. After the settlement that we
22 started today -- discussing with the estate,
23 do you intend to make any works that use the
24 word LOVE?

25 A. I probably will because LOVE is

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1 M. McKenzie

2 public domain, and I'll start doing LOVE
3 things pretty much immediately.

4 Q. And you have, in fact, you know, in
5 the 2000s, right, in that decade, 2000 to
6 2010, made LOVE works, right?

7 A. No. That was a completion of the
8 LOVE portfolio and Bob and I had that
9 discussion. When we did the LOVE portfolio,
10 it was supposed to be metal covers, and we
11 tried it in 2000 and -- excuse me, 1995, but
12 they didn't come out well. We didn't like
13 it. We tried it again in around 2000 and --
14 maybe around 2001. Again, we didn't like it.

15 And then I got hooked up with a
16 metal company that had the ability to make
17 things that were much cleaner and sharper
18 than we were able to do before, because
19 technology had gone forward in the context of
20 metalwork.

21 So we completed that contract that
22 was done in 1994. That's what that was.
23 Other than that, no, I didn't do anything
24 with LOVE, because Bob asked me not to.

25 Q. And can you tell me the

EXHIBIT D - 21

1 M. McKenzie
2 circumstances of when he asked you not to?

3 A. He just didn't want me to. He
4 would say, Look, I don't want to get a
5 headache with Simon. He thinks he owns it.
6 I don't want to get wrapped up in it.

7 I said to Bob, it's public domain.
8 You know it is, and I know it is.

9 He said, I know it is, but I don't
10 need the headache with Simon.

11 So okay. I respected his wishes,
12 like I did all the time. If he told me he
13 didn't want to do something with Barak Obama,
14 I'd be begging him, Come on, you can go on
15 The Oprah Winfrey Show, Barak Obama, what
16 could be better.

17 He said, I don't want to do it.

18 Who says no to that, but he did.

19 Q. Metal works on the aluminum panels,
20 the red and gold LOVE works, is that what you
21 were referring to?

22 A. Red and gold LOVE works, I don't
23 know what that is.

24 Q. You said the metal LOVE works that
25 you were just referencing a moment ago in

1 M. McKenzie
2 your prior answer, is that what you were
3 referring to or not?

4 A. No. It wasn't done with Metal
5 Works. It was done with another company.
6 What I'm saying is the ability for people to
7 make metal portfolio covers circa 2000 and
8 whatever that was, '12, '13, whatever, was
9 very different than it was before because the
10 technology had come out that allowed for
11 computerized bending, cutting and shaping of
12 metal, which didn't exist, at least not to my
13 knowledge. When I tried it the other times,
14 they were kind of bent in what's called a
15 break, and they looked -- you know, when I
16 look back on them, they're messy. And I
17 understand why Bob didn't like it because his
18 work was very much about being perfect.

19 Q. You said that you were allowed to
20 or you could have done LOVE, but you didn't.
21 What about the Dylan works?

22 A. Well, that was Bob's idea. I had
23 just come back from talking to Larry Bigozi
24 (phonetic), and he had done a project with
25 Ed Luce whose work both Bob and I really

1 M. McKenzie
2 loved. And he reminded me that Bob and I
3 always talked about working with a writer,
4 you know, because he's -- I'm a writer, Bob's
5 a writer.

6 And I said, Well, let's do
7 something with a writer.

8 And, first, he suggested, Let's do
9 it with Art Crane.

10 I said, Art Crane? Of all the
11 writers in the world, that's who you want to
12 do it with? I said, There has to be
13 something better than that. What about
14 Walt Whitman?

15 He said, To tell you the truth, the
16 writer who affected me the most is Bob Dylan.

17 I said, That's funny, because I
18 just had a meeting with Dylan's agent a few
19 days ago about doing a Broadway piece, not
20 with Dylan but with one of his other clients,
21 and I loved the idea because I also loved
22 Dylan. Let's do it.

23 And then I had dinner with
24 Billy Name, who was the head of the Warhol
25 factory for many, many years. And I asked

1 M. McKenzie
2 him how Dylan got involved with Warhol.

3 And he said, Well, Dylan wasn't
4 involved with Warhol. He was involved with
5 Dean Sedgwick, and that's what Like a Rolling
6 Stone is all about.

7 I said, That's amazing.

8 And he told me how that happened
9 and all that.

10 I went back to Bob and I said, you
11 know, I just heard this story -- we were
12 trying to figure out how to use Dylan, and
13 Dylan's work that was -- I can't remember --
14 it was 1823 pages of songs, so how do we do
15 that. You know, what do we select, where do
16 we go to illustrate all the songs.

17 He said, and I said, Like a Rolling
18 Stone sounds like the way to go. And then we
19 tried to figure out, well, how are we going
20 to illustrate this now.

21 And he said, Michael, I've done
22 2000 drawings and pictures. Can't we find
23 something that works? I mean, I listened to
24 Dylan every day of my life for seven years.
25 It was in my head. It must be in my drawings

EXHIBIT D - 22

1 M. McKenzie
 2 somewhere. So let's go through the drawings
 3 and find what we can find, match it up with
 4 Like a Rolling Stone. What are you doing.
 5 And I'm like, All right. It sounds
 6 easy to you. It doesn't sound that easy to
 7 me, but we'll work on it.
 8 We tried -- that went on for
 9 probably a year, and we finally got to the
 10 point where we said, You know, we got it now.
 11 This really looks good.
 12 And we did a book that was really
 13 not a book. It was a limited edition
 14 collectable object. And we did a couple of
 15 works on canvas and we did several of them on
 16 paper, which he signed. He was still signing
 17 things then. And that's it. That was the
 18 history with Dylan.
 19 Q. So Robert Indiana approved of that
 20 project and those works, correct?
 21 A. He said it was the best thing he
 22 did ever did in his life.
 23 Q. And he signed those works himself?
 24 A. Yes, he did.
 25 Q. And he knew they were being sold

1 M. McKenzie
 2 and exhibited, correct?
 3 A. Of course. And he got paid for it
 4 as well.
 5 Q. Tell me about that.
 6 Where were they sold and exhibited?
 7 A. I don't have that record in front
 8 of me, you know, those places. A lot of that
 9 was handled by Rosenbaum.
 10 Q. How much did they sell for?
 11 A. Again, I don't have that record
 12 committed to memory.
 13 Q. Can you tell me approximately?
 14 A. I really don't remember. I think
 15 the prints are about \$5,000 or so.
 16 Q. And how much of -- and how was
 17 that --
 18 MR. MARKHAM: Let him finish his
 19 question.
 20 MR. SPIRO: Thank you, John.
 21 A. And the books were, I think, 7,000,
 22 something like that.
 23 Q. Okay. And how was the money
 24 divided amongst the various parties?
 25 A. It's not your fucking business.

1 M. McKenzie
 2 Q. Are you refusing to answer that
 3 question?
 4 A. You know, I don't know how the
 5 money was divided. Whatever he was supposed
 6 to get, he had some percentage, and the
 7 percentage varied depending on what the
 8 object or thing was. I can't remember which
 9 one was where. We didn't do any sculptures
 10 of that, so he probably got 30 percent of
 11 everything we collected.
 12 Q. Is there a contract that governed
 13 this that I could look at, or you could point
 14 me to?
 15 A. No. That was an oral agreement
 16 that we had. Bob did a lot of oral
 17 agreements, not just with me but with lots of
 18 people.
 19 Q. Do you believe that oral agreement
 20 to be binding?
 21 A. Yes.
 22 Q. Was Jamie Thomas involved in that
 23 project?
 24 A. A hundred percent.
 25 Q. Whose idea was that project?

1 M. McKenzie
 2 A. I thought it was Indiana's idea to
 3 do Dylan. I hadn't thought of Dylan. I was
 4 trying to convince him to do John Ashbery,
 5 who I took my MFA under, and was one of my
 6 best friends, but he didn't want to know
 7 about John Ashbery.
 8 Q. And Jamie obviously authorized this
 9 as well, correct?
 10 A. Yes.
 11 Q. Did anybody get permission from
 12 Bob Dylan to use his lyrics?
 13 A. We felt that since it was all
 14 limited edition work, that we could insofar
 15 as giving him the right to the copyright,
 16 that's all we needed to do, because if I had
 17 gone in that direction I would be still be --
 18 if I had gone through the Dylan mechanism to
 19 go -- make Dylan a partner in it, it would --
 20 we'd still be negotiating next year. It was
 21 fair use the way we used it.
 22 Q. Is the difficulty that you
 23 anticipated negotiating one of the reasons
 24 you did not go to Mr. Dylan?
 25 A. No. It was the timing. I realized

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1 M. McKenzie
 2 that Bob was ready to do it, and it was fair
 3 use, so there was no real -- you know, if I
 4 thought Dylan would have cosigned all the
 5 editions with Bob, we would have gone through
 6 it, but I didn't get the feeling from his
 7 group that he was interested in cosigning
 8 anything, so there was no real point in my
 9 pursuing something that I thought had no
 10 merit when we could go forward on fair use.
 11 Yes, if Dylan had cosigned everything, it
 12 would have been worth more, but the
 13 likelihood of him doing that right from the
 14 horse's mouth seemed very unlikely.
 15 Q. In fact, there are photographs of
 16 Robert Indiana signing the Dylan works,
 17 correct?
 18 A. Correct.
 19 Q. And those photographs are very good
 20 evidence that he, of course, authorized it,
 21 correct?
 22 A. That's correct.
 23 Q. And who directed those photographs
 24 to be taken, if you know?
 25 A. Indiana always directs photographs

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1 M. McKenzie
 2 be taken, because he has a huge library of
 3 everything he's ever done photographically
 4 documented. That's his thing, not mine.
 5 Q. What about videos, did he -- did
 6 he direct videos as well?
 7 A. I think video was like a new thing
 8 to him, and he wasn't exactly sure what it
 9 was. He was more of a photography person.
 10 Q. And these works were exhibited at
 11 the Baker Museum, correct?
 12 A. Yes.
 13 Q. And you told the Baker Museum that
 14 you owned the copyrights to the Dylan works,
 15 and it was fine to exhibit them, correct?
 16 A. I didn't tell them I owned the
 17 copyrights. I told them that we owned the
 18 rights to exhibit it because Indiana signed
 19 it, and did the deal with me. He was getting
 20 for it, so, yes. Indiana signed it, and he
 21 wanted to exhibit, so we did it.
 22 Q. Did Mr. Thomas earn anything from
 23 the Dylan project?
 24 A. Not from me. I mean, if he earned
 25 something from Indiana, that, I can't tell

EXHIBIT D - 23

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1 M. McKenzie
 2 you. You would have to look at their
 3 records, not mine.
 4 Q. Did you ever pay anything to
 5 Mr. Thomas during the course of this time
 6 period we're here discussing?
 7 A. No. He was Indiana's employee, not
 8 mine.
 9 Q. Right. But a finders fee, a
 10 commission, paying for expenses, anything?
 11 A. Never.
 12 Q. You never renumerated or paid
 13 Mr. Thomas for anything?
 14 MR. MARKHAM: Asked and answered.
 15 A. No. I mean, he was paid by
 16 Indiana. It's not my -- you know, Indiana
 17 didn't pay my staff. I didn't pay his.
 18 Q. What about covering expenses or
 19 costs?
 20 A. Why I would do that. No.
 21 Q. I don't know. I'm asking you:
 22 Have you ever done that for Mr. Thomas, yes
 23 or no?
 24 A. No. I never would.
 25 Q. Why not?

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1 M. McKenzie
 2 A. Because he's not my employee. He's
 3 Bob's employee. It's like I'm not going to
 4 pay you. You're not my employee. I'm not
 5 going to pay for your laundry. Why.
 6 Q. How long did the selling,
 7 displaying, promoting of Dylan works go on
 8 for, approximately?
 9 A. It's still going on. So from the
 10 day we finished it -- I don't recall when
 11 that was, it was a marketable commodity,
 12 which is partly why we did it, although
 13 mainly why we did it was because we both
 14 liked Dylan, and we thought it was a great
 15 idea.
 16 Q. Can you quantify the total value in
 17 sales for the Dylan works?
 18 A. It didn't do very well. I don't
 19 know how many sales we had from it. It was
 20 -- you know, I personally lost a fortune on
 21 it because I had to pay to make it all. What
 22 we got back -- I had to pay for it all, all
 23 the production, all of the printing, all of
 24 the books. It was a big expense, and that
 25 expense isn't even close to being covered.

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1 M. McKenzie

2 Q. Can you give me a sense of the
3 total gross value of the sale of the Dylan
4 works approximately?

5 A. \$10,000, maybe.

6 Q. Pardon?

7 A. \$10,000, maybe.

8 Q. All of the Dylan works that were
9 sold over the entire period of time, anything
10 Dylan related, you think the total value of
11 all of that was \$10,000?

12 A. About that.

13 Q. Works were displayed also at the
14 Mitchell Gallery, correct?

15 A. Correct.

16 Q. You mentioned Mr. Rosenbaum a few
17 times.

18 Did you have any issues or
19 disagreements with Mr. Rosenbaum?

20 A. Not during, but we found out later
21 that he was misrepresenting what the -- his
22 end sales were, and what the actual retail
23 prices of things were. We were relying on
24 his information to be accurate, and we find
25 out now that he was actually getting double

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1 M. McKenzie

2 and triple what he claimed he was getting, so
3 that was -- at a certain point we had to let
4 him go because we knew he was cheating us,
5 and therefore depriving the estate of 25
6 percent of everything it should have gotten,
7 which we're not exactly sure exactly how
8 much, because he's hiding his records, but
9 eventually we'll find out.

10 Q. The contract for him to sell the
11 Dylan works was an exclusive contract,
12 correct?

13 A. I don't know if the Dylan works
14 were included in that.

15 Q. Well, let me ask you this: Did you
16 ever -- can you explain to me how it came to
17 be that there were duplicate sculptures in
18 the Dylan works?

19 A. Yes, I can. Because Rosenbaum had
20 hidden all of its documents -- Rosenbaum has
21 hidden of his documents from 2008 to 2010
22 making it very difficult to know what sold
23 during that time. That has been done
24 specifically to try to induce me to make a
25 mistake. They have hidden those documents,

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EXHIBIT D - 24

1 M. McKenzie

2 and under oath claimed that they didn't work
3 with us during those three years, which we
4 have contracts showing that they did, and
5 it's a clear fraud. That's how it happened.

6 Q. So you're saying that that --

7 A. The only one that was a duplicate,
8 when we found out it was a duplicate, we
9 replaced it. We went to the market. It just
10 was -- we had it at the painters apparently,
11 and he was apparently monitoring everything
12 that went to the painter to try to look for a
13 problem, and the painter called us up and
14 said there was a problem and we yanked it.
15 So it never hit the market. So it was never
16 sold. It was changed. It's like making a
17 print that has a wrong number. You erase it
18 and change or we destroy it. It doesn't
19 matter. It happens all the time. It every
20 time we do an edition. Somebody puts the
21 wrong number, somebody signs it twice, the
22 phone rings, and somebody puts down the phone
23 number instead of the edition number. If
24 it's a sculpture, you know, you change the
25 plate. It's a couple-of-hour change. It's

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1 M. McKenzie

2 not a big deal.

3 Q. So it's your testimony that it was
4 things that Rosenbaum did that caused you and
5 your office to make that -- what you're
6 calling is a mistake?

7 A. Yes.

8 Q. And just to be very clear, they're
9 the ones that caught that mistake and
10 notified you.

11 You didn't catch the mistake, and
12 notify them, correct?

13 A. They had all the records that could
14 show the mistake. We didn't have any of
15 those records.

16 Q. Is that correct, what I asked?

17 A. Yes.

18 Q. And you know that Rosenbaum didn't
19 think you were on the up and up, right?

20 A. Pardon me?

21 MR. MARKHAM: Objection.

22 Speculation.

23 Q. Do you know that Rosenbaum didn't
24 think that you were on the up and up?

25 MR. MARKHAM: Same objection.

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1 M. McKenzie

2 A. Yeah. Well, somebody that steals
3 \$20 million from me and then tries to weasel
4 their way through things can think anything
5 they want, but the bottom line is they're
6 thieves and liars, so I don't care what they
7 think about me.

8 Q. You know that that's he thought
9 about you?

10 A. That's what he made up about me to
11 cover up the fact that he stole \$20 million
12 of which \$5 million should have been to the
13 estate.

14 Q. You understand that even though you
15 may have replaced the duplicate sculpture,
16 that it's still possible that the marketplace
17 would be aware that there was a duplicate
18 sculpture, and it could damage the
19 marketplace, correct?

20 A. No, because we took it off the
21 market before it went to the marketplace, and
22 the only one throwing that information out is
23 Rosenbaum because we assume he is trying to
24 get the rights to do HOPE and LOVE.

25 Q. We can all agree that if that kind

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1 M. McKenzie

2 of information hits the marketplace, all
3 things equal, it's bad for the artwork,
4 correct?

5 A. Well, anything is possible. It's
6 like saying what if a (inaudible) stole a
7 painting, I don't know, it's possible. It
8 didn't happen, so what's the point.

9 Q. Can you explain to me how the
10 mistake, what you're calling a mistake,
11 happened?

12 A. I told you, Rosenbaum had all the
13 records of everything that we sold. He had
14 all the numbers of things that were done. I
15 only had a partial record. We asked him for
16 those records from 2008 to 2010 a hundred
17 times. He failed to provide it. And then he
18 went under oath and testified under oath that
19 he didn't work with us in 2008, '09 or '10,
20 until the democratic convention of 2010,
21 which we all know was 2008, and he's hiding
22 all those records and it's making it very
23 difficult to pursue. And we will pursue it.

24 Q. Was the mistake yours, or was it
25 employees of yours, according to you?

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EXHIBIT D - 25

1 M. McKenzie

2 A. I take responsibility of any
3 mistake that happens in my context, because
4 I'm the CEO and owner of this company. I
5 made the mistake. Rosenbaum induced it. He
6 purposely induced it. He's still inducing
7 it. He lied under oath to pretend he's not
8 inducing it, and he'll get his day.

9 Q. So it's your testimony, just so I'm
10 very clear, that Rosenbaum's conduct was
11 intentional to induce you into making what
12 you're calling a mistake and to produce the
13 duplicates, that's your testimony?

14 A. Yes.

15 Q. And has there ever been another
16 situation in which you've mistakenly produced
17 a duplicate, in air quotes, mistakenly?

18 A. Like I say, when I do an edition,
19 and we do an -- particularly when it's a
20 large edition, there's almost always an
21 example of, for instance, the phone rings,
22 and Robert Indiana is about to sign Number 9
23 of 200, he writes down the phone number where
24 9 of 200 should be. What do you do. So you
25 can erase it, you can rip it up, you can

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1 M. McKenzie

2 change it.

3 In a sense a sculpture is just
4 another multiple. That's all it is. It's
5 not an act of God. It's a piece of art. And
6 in the course of making some of these
7 sculptures, there have been mistakes in
8 making them where I had to destroy them.
9 They weren't well made. It's just part of
10 the game.

11 It's like you as a lawyer, did you
12 ever ask a question that you didn't get the
13 right answer to, did you ever make a mistake,
14 have you ever made a mistake in your life,
15 because most people, if they're honest, will
16 say yes, but maybe you've never made a
17 mistake in your life. I don't know. You
18 could be the only person.

19 Q. I'm sorry. Are you done?

20 A. Yeah.

21 Q. Were you forced to give the estate
22 back 70 of the works?

23 A. I wasn't forced. They were --
24 Indiana was -- you know, every time we do a
25 work, we do an artist proof. So Indiana has

1 M. McKenzie
2 got his stake in everything we do. So if we
3 make a Dylan portfolio, he's got X amount, I
4 have Y amount. That's how the art publishing
5 works. Except for Simon Salama-Caro, who
6 doesn't give the artist proofs to him, to
7 Indiana.

8 Most publishers -- and I'm
9 particularly generous in that scale compared
10 to most publishers, I give the artist a lot
11 of artist proofs because I want him to have a
12 stake in my heritage as much as I have a
13 stake in his, and Indiana -- I was bringing
14 up artists proofs for quite a long time. I'm
15 putting them in my house because Jamie was
16 saying, Bob, you know, he's got too much
17 stuff here, and we need to find a place to
18 put it, because he's got animals running all
19 over the place. It's just going to get
20 destroyed. Why don't you keep it in your
21 place.

22 All right.

23 But after the sixth or seventh time
24 I do that, each time I came up, I had 5
25 pieces, 12 pieces, 9 pieces, 20 pieces.

1 M. McKenzie
2 After a while there were a lot of his artist
3 proofs in my house, and I don't want the
4 responsibility for that.

5 I kept saying, you know, I don't
6 want to own your work in my house. I don't
7 want that insurance headache. I don't want
8 it.

9 So when the estate said do I have
10 anything of Robert Indiana, I said, Yes, and
11 I'd love to get it out of my house.

12 And they said, Will you bring to
13 the office of James Brannan?

14 I said, I'll bring it anywhere you
15 want, just tell me.

16 I was dying to get rid of it, so I
17 took all the things that were artist proofs
18 that were in my possession, and I brought
19 them to James Brannan. Forced, no, I could
20 have said I have nothing, if I was another
21 person, but I'm Michael McKenzie. I don't do
22 that. I'm an artist who started an art
23 publishing company who is pro artist, and I'm
24 not trying to rip artists off. That's not my
25 thing.

EXHIBIT D - 26

1 M. McKenzie

2 Q. You testified a moment ago that the
3 entire marketplace for the Dylan works --
4 withdrawn -- that the total sale of the Dylan
5 works was in total \$10,000, am I -- did I
6 understand you correctly?

7 A. Yes.

8 Q. Have you ever represented to others
9 that the marketplace for the Dylan works
10 exceeds \$30 million?

11 A. No. That was Simon Salama-Caro who
12 said that. Where he got that information,
13 who knows, because he's basically a liar.

14 Q. We talked a moment ago, or a few
15 minutes now, about that aluminum LOVE that
16 you created, the LOVE work.

17 Do you know what I'm referring to
18 from a few minutes ago?

19 A. Yeah. I told you all about that.
20 You want to do it again?

21 Q. Well, I'm just asking one question
22 in follow-up --

23 A. Go ahead.

24 Q. -- which is: Did Mr. Indiana
25 authorize that aluminum LOVE?

1 M. McKenzie

2 A. Of course. And he had them in his
3 possession as well. His artist proofs are
4 there. He still has them, I assume.

5 Q. Did he personally authorize that?

6 A. Yes, that's what I said. He
7 personally authorized that, and he was also
8 given those works as artist proofs for him to
9 make money on and keep and do whatever he
10 wants with them.

11 Q. How did he authorize that, in
12 writing, in person?

13 A. It was authorized in 1994 when we
14 did the contract to make all the metal
15 covers -- he authorized it in 1994 when we
16 did the contract to make the metal LOVE
17 covers, which, when we made them, he twice
18 said they weren't good enough for him to want
19 to be involved in it. It wasn't good enough.
20 It wasn't up to Robert Indiana standards.
21 And I agreed with him. It looked messy.

22 But when I found a company that
23 could make it to the standard that we had
24 rested with in 1994, we made a sample. The
25 initial one I believe was made out of

1 M. McKenzie
2 stainless steel, which was crazy because it
3 weighed too much. And then we made it out of
4 the aluminum. I brought it up to him, and he
5 said, No, this is beautiful. What do you
6 want me to tell you --

7 THE COURT REPORTER: I'm sorry. I
8 brought it to him -- you have to keep
9 your voice up.

10 THE WITNESS: Look, Lady, I'm only
11 talking. I don't have to do nothing.
12 Okay. I'm going to try.

13 THE COURT REPORTER: I'm sorry, can
14 we take a break, because I need to hear
15 you.

16 THE WITNESS: Okay. Take a break.
17 Let's go. Take a break.

18 MR. MARKHAM: Ma'am, if -- anytime
19 the court reporter wants a break, we're
20 very happy to give her a break --

21 THE WITNESS: Yeah.

22 THE COURT REPORTER: I'm sorry. I
23 don't need a break, but I need to be
24 able to hear you. And when I ask you to
25 speak up, I need you to speak up a

1 M. McKenzie
2 little bit. I'm sorry.

3 THE WITNESS: Okay.

4 THE COURT REPORTER: I'm not being
5 rude to you, but I'm trying to take a
6 record down.

7 THE WITNESS: Okay. I'm sorry. I
8 didn't know what you were asking me.

9 A. I don't know what I -- was I being
10 asked again about the portfolio thing, is
11 that it?

12 So Indiana -- we made -- we
13 finished the contract from 1994, and we
14 finally hit the level that Indiana would
15 approve. The other two times we tried it, he
16 didn't approve it, and then we did it in
17 stainless steel and I -- he loved it, but it
18 was just too heavy. We switched it to
19 aluminum. He loved that, too.

20 And that was really about
21 fulfilling the contract in 1994 and it also
22 gave him a bunch of pieces as well because he
23 was entitled to his share of it, and he had
24 it in his studio and all that other bit. And
25 LOVE is public domain anyway, so it really

EXHIBIT D - 27

1 M. McKenzie
2 doesn't mean anything. So what's your
3 question?

4 Q. The 1994 contract, is that an oral
5 contract that you're referring to, or is that
6 a written contract?

7 A. Written contract.

8 Q. Do you have that contract?

9 A. I do.

10 Q. Have you turned that contract over
11 in discovery?

12 A. Yes, I have.

13 Q. When did -- when, according to you,
14 do you revisit that agreement? You said
15 there was a break in time, and then you
16 revisit it.

17 Can I get a date or approximate
18 date on when you all revisited the creation?

19 A. I think the first one we did in
20 1996, and it really -- you know, when I look
21 at what we did in whatever it was, 2011 or
22 whenever it was, the 1996 one was an
23 abortion. It's not up to Indiana's standard.
24 I couldn't argue with it. He was right. And
25 we abandoned it until we could get something

1 M. McKenzie
2 better.

3 Tried it again with another company
4 that was in Long Island City that did an okay
5 job. They had done some metalwork for myself
6 for Larry Rivers, and they had done some
7 things with Keith Haring and Andy Warhol for
8 me as well, and I tried it again and again.
9 While it worked for Haring and Warhol whose
10 work is not as hard edged and detailed as
11 Indiana's, it didn't look good for Indiana.
12 So that was, I think, 2001 or '02.

13 And then when I started working
14 with him again in 2007, '08, we talked about
15 it again, and in 2009 or '10 I realized that
16 there was another level of production that
17 was going on in metalwork that I had never
18 seen before. It was computer driven, and I
19 realized that we should try it again. And I
20 tried it again. I brought it up to him, and
21 I just left it there. I didn't even say
22 anything.

23 I said, What do you think?

24 It's amazing.

25 That was it. That's how it

1 M. McKenzie

2 happened.

3 Q. Do you recall a meeting in April of
4 2013 between Simon and Mark and you regarding
5 this issue?

6 A. Yes. And I -- and that was one of
7 the meetings at that 410, I think it was
8 Lexington Avenue, where they were trying to
9 claim that was Morgan's international
10 headquarters. It's like really. It says
11 something like Collin and Fishback on the
12 door.

13 Q. How did that meeting come about?

14 A. Simon asked for the meeting. You
15 know what, I got to 410 Lexington Avenue. I
16 went up to the concierge.

17 I said, I'm here to see Simon
18 Salama-Caro.

19 He looked at me like I was insane.

20 I said, I'm here to see the

21 Shearbrook Corporation.

22 He looked at me like I was insane.

23 I said, I'm here to see the Morgan

24 Art Foundation.

25 He looked at me like I was insane.

1 M. McKenzie

2 I said, Morgan Arts Foundation.

3 He looked at me like I was insane.

4 I said, Sir, how long have you
5 worked here?

6 He said, 30 years. He said, I know
7 everybody in the building.

8 I said, Well, I'm supposed to go
9 to -- whatever floor it was.

10 He said, Well, that's an accounting
11 firm.

12 I said, All right. I don't know.

13 I don't know what to think.

14 I called Simon.

15 I said, Are you in this room, 2105,
16 or whatever it was.

17 He said, Yeah, it's Morgan Art
18 Foundation. I said to the guy, What is it?

19 He said no -- the concierge said,
20 That's not Morgan Art Foundation. That is an
21 accounting firm.

22 I said, Whatever. You know, I just
23 called Simon who said he was in that room. I
24 went up. It was a huge space, cubicles and a
25 couple of conference rooms. And all of a

EXHIBIT D - 28

1 M. McKenzie

2 sudden I found it kind of weird. Why do you
3 want to take a meeting at 6:30? Who the hell
4 takes a business meeting at 6:30. Most
5 people work 9 to 5, 10 to 6, 9 to 6. You
6 don't purposely schedule a meeting at 6:30.

7 And I realized that that was --
8 that was not any Morgan Art Foundation. It
9 was exactly what the concierge described. It
10 was some kind of accounting firm. And I told
11 Simon the same thing I'm telling you. That
12 was the continuity of what we did in -- that
13 was a continuity of what we did in '95 when
14 we finally finished it out, and I believe I
15 also mentioned, by the way, LOVE was a public
16 domain, so I don't know what you're even
17 asking me about what am I doing with LOVE.
18 You don't have any rights.

19 Q. You keep saying that LOVE was in
20 public domain.

21 Did you ever get a legal opinion, a
22 formal legal opinion, as to that fact?

23 A. You bet.

24 Q. And have you provided that in
25 discovery?

1 M. McKenzie

2 A. Sure did.

3 Q. And who made that legal opinion,
4 who wrote that legal opinion?

5 A. Mrs. Grossman. She's a copyright
6 attorney that works for a lot of the book
7 companies.

8 Q. And if we asked you to point us to
9 the Bates number of that document, you could
10 do that?

11 A. Yes.

12 Q. And so that was the main thrust of
13 your explanation to Morgan Art was that it
14 was in the public domain?

15 A. It was part of it. I mean, I knew
16 that in '95 I had a billionaire behind me who
17 wanted to take LOVE public, and he researched
18 it with all of his attorneys and came back to
19 me. He was willing to put up a hundred
20 million dollars in 1995 to make LOVE
21 Incorporated, to take it global. He had 2800
22 IPOs that he had done that he could run down,
23 including many fashion companies, all kinds
24 of (inaudible) companies.

25 And he did the research and said,

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1 M. McKenzie
2 I'm sorry to say, I have the hundred million
3 dollars. That's not the issue. But the
4 problem is LOVE is in the public domain. We
5 have no protection on it, and I can't go to
6 my people and tell them, Let's roll out \$500
7 million worth of LOVE fashion things and find
8 out we have no protection on it.

9 And what we also found out from
10 both Miss Grossman and Pattishall, which is
11 the -- one of the biggest copyright firms in
12 the world, they got very clear that you
13 cannot copyright a word. That's not
14 something you can do. It's not considered
15 creative enough -- it's not considered
16 creative enough to pass the test for
17 copyright. You can't copyright a word. So
18 we had every conceivable boundary of anyone
19 who knew anything about copyright that we
20 could contact telling us, You can't copyright
21 a word. And, further, Indiana blew it by
22 applying for the copyright, missing it and
23 not putting the copyright on all of his work
24 that went out to the public.

25 And I spent many, many, many, many,

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1 M. McKenzie
2 many dollars finding this out. And I'm sure
3 Mr. Emanuel spent 10 times what I did.

4 Q. So just so that we can put a pin in
5 this and move on, it's -- you're not claiming
6 that any work you did with LOVE was
7 authorized by Morgan Art Foundation because
8 you didn't seek their authorization, correct?

9 A. They had no authorization, correct.

10 Q. I'm correct in what I'm saying,
11 that you never sought their authorization,
12 correct?

13 A. I didn't seek it from Moses [sic]
14 either, because none of them have any right
15 over LOVE. It's public domain. I don't
16 need -- it's fair use. And you're an
17 attorney. You should know what fair use is.
18 So if you want me to explain it, or you got
19 it.

20 Q. If I want to ask a question, I'll
21 ask a question.

22 A. Okay. Good for you.

23 Q. And part of the reason I think that
24 the reporter is having a hard time following
25 is because rather than answer the questions

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EXHIBIT D - 29

1 M. McKenzie
2 you just sort of go on to tell a story that's
3 not really responsive to the question. So I
4 think we can get out of here faster if you
5 just do it the way that all other depositions
6 are done, question, answer, question, answer.

7 MR. MARKHAM: Okay. I want to say
8 something. First of all, I agree with
9 that, and the witness is -- I'm sure
10 will make an attempt to do that.

11 However, some of your questions are
12 very open ended. I wrote down a couple
13 of them. One of them is: What about
14 the Dylan works? End of question. So
15 he went on --

16 MR. SPIRO: Some of them -- some of
17 them are open ended. Some of them are
18 not.

19 MR. MARKHAM: I am not -- don't
20 interrupt me. I'm --

21 MR. SPIRO: Some of them are open
22 ended. Some of them are not.

23 MR. MARKHAM: I'm telling you --

24 MR. SPIRO: All right. Let's go
25 off the record then. Let's go off the

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1 M. McKenzie
2 record.

3 MR. MARKHAM: No, I don't want to
4 go off the record. I do not want to go
5 off the record.

6 MR. SPIRO: Okay. We're going to
7 do this --

8 MR. MARKHAM: On the record, that
9 some of your questions are very open
10 ended, and that's why some of the
11 answers are narrative in form. And the
12 answers could be shorter. He's trying
13 to be helpful and explain. So instead
14 of just saying no, he says no and gives
15 you the reason.

16 If you want him to say, did you do
17 such and such, no, and wait for you to
18 say why, okay. I think in balance he's
19 trying to be fair.

20 So, with that said, let's take a
21 10-minute break. We've been going for
22 about an hour and 40 minutes. I'd like
23 to take a break.

24 MR. SPIRO: Sounds good.

25 THE VIDEOGRAPHER: The time is

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EXHIBIT D - 30

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1 M. McKenzie
 2 11:03 a.m. We are off the record.
 3 (Recess.)
 4 THE VIDEOGRAPHER: The time is
 5 11:35 a.m. We are back on the record.
 6 Q. When was the first time in this
 7 case that you asserted that the reason you
 8 didn't seek permission to use LOVE was
 9 because it was in the public domain?
 10 A. After I reaffirmed, I thought maybe
 11 there was -- I'm not a lawyer, so I didn't
 12 know if there was some way of taking
 13 something out of the public domain. That was
 14 my question to myself. So since I couldn't
 15 answer that question, since I'm not a
 16 copyright attorney, I asked that question of
 17 copyright attorneys, and they all affirmed
 18 that you cannot take something from public
 19 domain out of public domain. It doesn't work
 20 that way. And when I knew for sure that the
 21 public domain that I knew about from 30 years
 22 ago was still standing, that's when I
 23 asserted that this is public domain.
 24 Q. Right. So in your first filing in
 25 this case you're aware you didn't assert that

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1 M. McKenzie
 2 it was part of the public domain, correct?
 3 MR. MARKHAM: Yes or no.
 4 A. Correct.
 5 Q. Yeah. And in your second filing
 6 you didn't assert that it was in the public
 7 domain, correct?
 8 A. I had told the attorney that my
 9 understanding was it was in public domain,
 10 but he didn't put it in.
 11 Q. And even in the third response you
 12 didn't -- you didn't put it in, correct?
 13 A. Correct.
 14 Q. You and your attorneys on your
 15 behalf, correct?
 16 A. Right. And Morgan acted on this
 17 for 20-something years knowing it was in
 18 public domain, but they never asserted that
 19 -- they never admitted that it was in public
 20 domain. They were trying to act like it
 21 wasn't, and they further put copyrights on
 22 the stuff and sold the copyrights knowing
 23 that they had none of those rights, and that
 24 is a fraudulent act.
 25 THE WITNESS: I'm sorry. I'm

1 M. McKenzie
 2 trying to -- really, I know your job is
 3 hard. Can you hear me, or am I doing a
 4 bad job now? Are you hearing me?
 5 THE COURT REPORTER: I can hear
 6 you, yeah.
 7 THE WITNESS: Oh, thank you.
 8 THE COURT REPORTER: But, you know,
 9 you start to trail off a little bit when
 10 you start talking, so I'm sorry if I
 11 have to interrupt you. I don't mean to
 12 be rude.
 13 THE WITNESS: No, I'm sorry if I'm
 14 not giving you what you need to do your
 15 job. It's my fault.
 16 MR. SPIRO: Okay. Can we continue?
 17 Is everybody all right? Okay. Sorry.
 18 Okay. Can we put up Exhibit 1?
 19 MR. MARKHAM: We don't have these
 20 exhibits. Did you send them to us?
 21 MR. SPIRO: If you ask me -- I'm
 22 going to ask my able colleague to help
 23 with some logistical matters, but I'm
 24 hoping that you can see the exhibit on
 25 the screen.

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1 M. McKenzie
 2 MR. MARKHAM: Most of it. The last
 3 one-tenth of it to the right is cut off.
 4 I may not -- it may just be in the
 5 margin, but we can see that.
 6 Are we going to get copies of
 7 these? Are these going to be marked?
 8 Because the last deposition we did, they
 9 sent us a whole batch with different tab
 10 numbers on them, one to, say, 60, and
 11 then they asked about a few of them.
 12 And they said, Turn up Tab 2, and
 13 we turned it up. And then they marked
 14 that. If you want to do it this way by
 15 just showing it, this is the first time,
 16 and not part of a larger text, how are
 17 we going to have these marked?
 18 MR. SPIRO: Well, I'm going to mark
 19 this as Exhibit 1 for the purpose of
 20 this deposition, and it corresponds to a
 21 Bates number that we'll provide to you.
 22 MR. MARKHAM: Okay. Very good.
 23 MR. SPIRO: And I don't intend to
 24 show very many documents.
 25 MR. MARKHAM: Okay. Well, as long

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EXHIBIT D - 31

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1 M. McKenzie
 2 as we keep track of them, and we get a
 3 copy of them with the exhibits marked,
 4 that'd be great.
 5 Q. Mr. McKenzie, do you recognize
 6 this?
 7 A. I'm reading it. I don't remember
 8 it, but whatever.
 9 Q. Have you had a chance to look at
 10 it?
 11 A. Yes.
 12 Q. Any reason -- do you remember it
 13 now?
 14 (Exhibit 1 marked for
 15 identification.)
 16 A. No, I don't. But anyway.
 17 Q. You don't doubt the veracity of it,
 18 and that it's an email --
 19 A. No.
 20 Q. -- that you would --
 21 A. No. I'm sure Jamie Thomas sent
 22 this to me.
 23 Q. Okay. And so at the time that he
 24 sent this to you, you were, of course, were
 25 aware of a contract regarding Simon and

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1 M. McKenzie
 2 Mr. Indiana, correct?
 3 A. I didn't know anything about these
 4 contracts. He's referring to them, not me.
 5 Q. Well, you're referring --
 6 A. This is Jamie to me, not me to
 7 Jamie. I didn't write this, Jamie did, and
 8 then I'm responding.
 9 Q. Right. And so but when Jamie tells
 10 you this, you're aware --
 11 A. But when he says there's a
 12 conflict, I don't know what it is because he
 13 would never let me look at any of this stuff.
 14 See, I don't know what any of these contracts
 15 are. They could say anything. All I told --
 16 all I told Jamie was that my understanding
 17 was that LOVE was in public domain so if it's
 18 a contract about LOVE, it really doesn't make
 19 any sense.
 20 Q. Well, what I'm asking you, just to
 21 start here, is not whether or not the
 22 contract is enforceable or what's in public
 23 domain, but just that Bob has contracts.
 24 A. With Morgan, he referred -- he
 25 never referred to a contract. He always said

1 M. McKenzie
 2 that he had rights with Simon. I never got a
 3 straight answer as to what they were or why.
 4 Q. The --
 5 A. Or what I'm saying --
 6 Q. I'm sorry. Are you done with your
 7 answer?
 8 A. Yeah.
 9 Q. And the distinction between rights
 10 and contracts, in your mind, what would be a
 11 right that wouldn't be part of a contract?
 12 I'm just having a hard time understanding.
 13 MR. MARKHAM: Objection.
 14 A. Well, you know, when someone says
 15 they have a right, I don't know what it
 16 means. And when it says Simon -- given Simon
 17 rights, or Simon -- many times he said, Simon
 18 thinks he has rights to everything I ever
 19 did. He never said Simon has the rights,
 20 rights to the contract -- Simon thinks he has
 21 rights. That's -- that was how he generally
 22 phrased it.
 23 Q. So in your email you say, you know,
 24 We'll come up Friday, probably leave Sunday,
 25 have a few paintings that are Bob's and a

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1 M. McKenzie
 2 check.
 3 Do you see that sentence?
 4 A. Yes.
 5 Q. In the check that you were going to
 6 bring, is that check payable to Mr. Indiana?
 7 A. Yes.
 8 Q. Is there any extra money in that
 9 check for Mr. Thomas?
 10 A. Never.
 11 Q. Did you ever give a check to
 12 Mr. Indiana that had extra money for
 13 Mr. Thomas?
 14 A. Never. He was -- he was Indiana's
 15 employee, not mine. I don't pay other
 16 people's employees.
 17 MR. MARKHAM: All right. You've
 18 answered the question.
 19 Q. And then it says, Unless -- down,
 20 next paragraph, Unless all of Bob's contracts
 21 are assignable.
 22 So you did understand that Bob had
 23 contracts, correct?
 24 A. That's what Jamie told me. He said
 25 that Bob must have signed some contracts with

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1 M. McKenzie
2 Morgan, and he asserted they're crooks.
3 Those contracts don't count. They're not
4 paying him. I don't know. I'm not his
5 accountant. I'm not really invested -- I
6 have never saw his bank account. I never
7 went through it. I never asked for it. You
8 know, I was going on his word and Jamie's
9 word and what the attorneys found in 2011,
10 and that looked pretty persuasive to me.

11 Q. But you're aware that Bob had
12 contracts, correct?

13 MR. MARKHAM: Objection. Asked and
14 answered.

15 Q. Mr. McKenzie, it's just a yes or
16 no. You were aware because Mr. Thomas told
17 you that you that Bob had contracts, you are
18 aware that Mr. Thomas told you Bob had
19 contracts, correct?

20 A. Yeah, but I had no idea what they
21 were.

22 Q. And Mr. Thomas said to you, I would
23 just be careful for now, correct?

24 A. It wasn't about -- I don't know
25 what it was referring to. A lot of times it

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1 M. McKenzie
2 would be -- careful might be something like
3 can I possibly bring over the 50 paintings
4 that are sitting in my house that could get
5 stolen by anyone on the island? I don't want
6 the responsibility.

7 And he would say, Bob doesn't want
8 anything more here.

9 Now, sometimes it would be because
10 his cat or dog just ripped up seven
11 paintings, and he didn't want anything back
12 in there. So I don't know what it refers to
13 right there because Bob was always on edge
14 about something.

15 Q. Let's to the next exhibit.

16 MR. SPIRO: And I'm marking this
17 next exhibit as Exhibit 2.

18 (Exhibit 2 marked for
19 identification.)

20 A. On my screen it's a beach scene
21 with rocks.

22 Q. There we go. Just take a moment to
23 look at this, Mr. McKenzie, and let me know
24 when you've had a chance.

25 You would agree with me that there

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EXHIBIT D - 32

1 M. McKenzie
2 was some concern that there were signed
3 documents between Bob and Simon, correct?

4 MR. RYAN: Alex, this is Paul Ryan.
5 Can you identify the -- I think it would
6 be better for the record if you could
7 identify your exhibits by Bates number.
8 I didn't hear you do that.

9 MR. SPIRO: Yeah, I didn't because
10 I don't see the -- there it is. This is
11 ending -- this is from AMER and it's
12 ending 1718.

13 Q. So my --

14 MR. SPIRO: Can we read back the
15 question?

16 THE COURT REPORTER: Sure.

17 THE WITNESS: Are you reading back
18 the question?

19 THE COURT REPORTER: Yes, yes.
20 (Record read.)

21 A. Yeah, I agreed with that on behalf
22 of Bob. I mean, I don't know what he was
23 doing with people that are listed as money
24 launderers who don't pay him. I was
25 concerned that he was going to be in hot

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1 M. McKenzie
2 water over whatever it was he was doing. And
3 I don't want to deal with people who are on
4 the -- you know, the copyright fraud, I was
5 trying to explain to him when I -- when I
6 realized what was going on with Janet Hicks
7 and ARS. I'm like, Are you kidding me?

8 It's like not only are you
9 assigning a copyright you don't own to the
10 sculptures, which I'm not sure what the
11 liability of that is, I'd say it's probably
12 fraud, but clearly assigning it to 1200 other
13 people when you clearly know you don't have
14 it is much more than fraud. This is a class
15 action suit waiting to happen.

16 MR. MARKHAM: So let me just -- let
17 me interrupt you for a second, Mike.

18 He just asked you whether there was
19 some concern. I realize you're trying
20 to be cooperative by saying yes and then
21 explaining that concern, but I think it
22 would be better if he just asked you a
23 question that you can answer yes or no,
24 say yes or no, and then say, I can
25 explain if you want.

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EXHIBIT D - 33

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1 M. McKenzie
 2 THE WITNESS: Yes.
 3 MR. MARKHAM: That may shorten
 4 things.
 5 A. All right. So, yes, and if you
 6 want an explanation, fine. If you want to
 7 make up your own, you can do that.
 8 Q. Are you done?
 9 A. Yeah.
 10 Q. What is your understanding of
 11 whether or not there was a contract that
 12 governed ART, A-R-T?
 13 A. I have no understanding about that.
 14 Q. What about EAT, E-A-T?
 15 A. No understanding at all.
 16 Q. Have you ever seen -- before the
 17 litigation, is it your position you've never
 18 seen any of the contracts between Indiana and
 19 Simon and Morgan?
 20 A. Yes. Before this litigation Bob
 21 never showed them to me. The attorneys read
 22 them and thought that the fact that they
 23 weren't being paid and weren't honoring
 24 contract, and they were written by the
 25 attorneys and very messy, that they were

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1 M. McKenzie
 2 probably fraudulent and would disappear as
 3 soon as they went before what they called --
 4 and would disappear as soon as they were
 5 shown to a judge.
 6 Q. What was your understanding of
 7 where the obligation came to show Mr. Indiana
 8 quarterly financials?
 9 A. That was, one, he told me that was
 10 the case. And, two, the two lawyers who
 11 looked at the contract said that was what was
 12 in the contract, and that the contract was
 13 written by Morgan, so any discrepancy would
 14 be on them, and that Indiana could show no
 15 financials at all over the course of at that
 16 time, 12 or 13 years, and not a single -- the
 17 only accounting they had was not from Morgan.
 18 It was a big thick licensing book that came
 19 from ARS. I did not look at it. I was only
 20 told what was there and why.
 21 I did see the licensing book. I
 22 didn't go through it. It was fairly thick,
 23 but it was clearly, to me, just throwing sand
 24 in Indiana's eyes trying to get him off the
 25 fact that Morgan wasn't giving him

1 M. McKenzie
 2 accountings. They were trying to throw some
 3 kind of irrelevant accounting from somebody
 4 else.
 5 Q. So your position is that the
 6 lawyers that were sitting with you at that
 7 time were the ones that saw the contract, but
 8 you didn't personally look at the contract,
 9 is that understanding -- am I understanding
 10 you correctly?
 11 A. Yes.
 12 Q. Is there a reason you didn't look
 13 at the contract yourself?
 14 A. I'm not a lawyer.
 15 Q. But you understood from the lawyers
 16 at that time that the contract had provisions
 17 that required accounting, right, you already
 18 said that, correct?
 19 A. Yes.
 20 Q. And --
 21 A. And that was violated for 12 years.
 22 Q. Pardon?
 23 A. And that was violated for 12 years.
 24 Q. You also understand that the
 25 contract governed certain work such as LOVE,

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1 M. McKenzie
 2 right?
 3 A. My understanding was it was
 4 principally about LOVE, and it made no sense
 5 to me because I knew that LOVE was in public
 6 domain. I couldn't really wrap my head
 7 around it.
 8 Q. And the lawyers at the time didn't
 9 tell you that it related to other pieces of
 10 art as well?
 11 A. No. They said that Indiana had
 12 sold them a bunch of paintings, and that it
 13 looked like it was really a ridiculous number
 14 that he got for it, but he advised Indiana,
 15 who wanted to sue them for the paintings as
 16 well, that if he agreed to a number for the
 17 paintings, that's his problem. They didn't
 18 want to litigate that. I remember that part.
 19 Q. Was one of the lawyers Frumer?
 20 A. No.
 21 Q. Was Mr. Frumer --
 22 A. And I don't -- I think --
 23 (Simultaneous crosstalk.)
 24 Q. Was Mr. Frumer involved in looking
 25 at these -- the contracts, and informing you

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1 M. McKenzie

2 of what the obligations were?

3 A. No.

4 Q. Was Mr. Frumer later involved in
5 enforcing what you believed to be your rights
6 regarding Indiana's works?

7 A. Yes. Mr. Frumer told me that he
8 thought Morgan owed Indiana \$250 million and
9 asked me if I would testify to that.

10 And I said, I have no way of coming
11 up with that number, confirming it, not
12 affirming it, no offense to nobody, but I
13 wouldn't know how to get behind that number.

14 Q. Did Frumer get involved in
15 protecting your rights when people questioned
16 the authenticity of your production of
17 Indiana's work?

18 A. No.

19 Q. He never got involved in protecting
20 your rights vis-à-vis Indiana's work?

21 A. He may have gotten involved with
22 protecting Indiana work vis-à-vis Indiana's
23 work and what he participated in, but he was
24 not my lawyer. He was Jamie Thomas' lawyer
25 and Robert Indiana's lawyer, at least that

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1 M. McKenzie

2 was my understanding.

3 Q. You never paid him?

4 A. No, I never paid him.

5 Q. And you never paid him indirectly
6 through Mr. Thomas, is that your testimony?

7 A. If Mr. Thomas gave him part of the
8 money I sent him, that was his call.

9 Q. Explain that to me.

10 A. Well, in other words, if I send
11 Indiana a million dollars, I don't know what
12 he does with it.

13 And if Jamie says, Could do you me
14 a favor and add on this because we have extra
15 expenses, I don't want to bicker over it, I
16 will send it, but I'm not -- he's not my
17 attorney.

18 Q. Right. But in terms of the example
19 you just gave, Mr. Thomas telling you can you
20 send a little extra, did he ever do that?

21 A. Yes.

22 Q. And did you send extra?

23 A. I did.

24 Q. And did you assume, as would be in
25 the normal course, that when he says that he

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EXHIBIT D - 34

1 M. McKenzie

2 needs a little extra for a certain reason,
3 that the little extra would go to that
4 reason?

5 A. Yeah. It was just another advance.
6 He gets more money. If he asked for an extra
7 \$50,000, it's going to come out of the next
8 million -- the next check for -- whether it's
9 a half a million or a million. So, I mean, I
10 never bickered over advances. Sometimes Bob
11 had financial problems and if he asked me to
12 send him an extra -- you know, once or twice
13 he'd say, Listen I know it's not time to pay,
14 but could you give me the half a million
15 dollars now, or could you advance 50,000 or a
16 million, we've got a problem with Sean or a
17 problem with Legal, or we have problem with
18 the group. Those things happened. And
19 unless it was really out of control, I
20 usually advanced him money.

21 Q. Even if it was specifically for
22 something that Thomas needed, correct?

23 A. No, not for Thomas. It had to be
24 for Bob.

25 Q. Did Thomas ever send you a message,

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1 M. McKenzie

2 I hate to be a pain in the ass, but if could
3 you put a little extra in the check for the
4 legal bullshit. John is doing a great job
5 but he ain't cheap?

6 A. Yeah, he did send me that. And
7 what Frumer told me, that his job -- I guess
8 with what's his name is doing now, Brannan,
9 he said, My job is to get as much money as I
10 can to the estate.

11 And I guess when Jamie and Bob
12 hired him, they probably gave him a small
13 advance, and they probably thought that
14 advance was going to cover him for six months
15 or a year, and all of a sudden they realize
16 that the pot was spinning a lot faster than
17 what they thought it was, and I felt that it
18 was in my interest for him to protect Bob's
19 interest, so I didn't really argue with it,
20 what was a small amount of money in
21 relationship to what was going on.

22 Q. But just as a factual matter, that
23 advancement did pay Thomas' legal fees,
24 correct?

25 A. No, not Thomas'. Indiana's.

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1 M. McKenzie

2 Q. But the distinction you're making
3 is because it was for Thomas that really what
4 Thomas was doing is for Indiana, so,
5 therefore, it's for Indiana, is that the
6 logic?

7 A. It wasn't for Thomas' legal fees.
8 It was way before Thomas had any legal fees
9 going on in this case. It was for the fact
10 that Frumer was trying to go -- as you know,
11 he sent Morgan a cease and desist letter, so
12 he was working for Bob, not for Thomas at
13 that time.

14 So when Thomas said, Look, we are
15 trying to clear this thing up, can you help
16 us, the answer is yes.

17 Q. Is it fair to say that it's your
18 position that every single work that you
19 produced was authorized by Indiana?

20 A. Yes.

21 Q. And when you say that, you mean
22 directly by Indiana and not by Thomas on
23 Indiana's behalf?

24 A. Yes. And there were a lot of
25 things that we wanted to do that Indiana even

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1 M. McKenzie

2 at towards end of his life said, no, you
3 know. I mean, I gave examples of he wouldn't
4 go on The Oprah Winfrey Show. The second
5 time we had The Today Show. It was probably
6 2/17, and he didn't want to do it. It was
7 The Today Show. It was -- The Today Show
8 wanted to wanted to follow up. They did a
9 story with him in 2011, I believe, and they
10 called back in 2017 to say they wanted to do
11 a follow-up show, and he wouldn't return the
12 phone call. So there were a lot of things
13 that he said no to. He didn't say yes to
14 everything. He turned me down for a lot of
15 things.

16 Q. Sorry, I figured you were done.
17 Are you done?

18 A. I said he turned me down for many,
19 many things, even right to the end.

20 Q. In this time period, 2016 to '18,
21 that I keep referencing --

22 A. Right.

23 Q. -- how did you certify works of
24 Mr. Indiana?

25 A. I'm not sure what "certify" means.

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EXHIBIT D - 35

1 M. McKenzie

2 Q. How did you authenticate?

3 A. We talked to Indiana, we talked to
4 Jamie. You know, I had -- at Bob's request,
5 I actually bought a house and set up a studio
6 there, so that he could work in a studio up
7 there because he said he was no longer
8 capable of getting down to New York to work,
9 so I bought a house up there, and I set up a
10 giant studio there with silk screen equipment
11 and cameras, the whole bit. And towards
12 around 2017 -- yeah, towards 2017 he took
13 more of the meetings in his house than in my
14 studio.

15 MR. MARKHAM: Alex, can I ask a
16 clarifying question? By certifying or
17 authenticating, do you mean what did
18 Mike do to the public to authenticate
19 the work, or how did he determine that
20 it was Indiana's work himself?

21 MR. SPIRO: How did he authenticate
22 works to the public.

23 MR. MARKHAM: Yeah, that's what I
24 thought you said.

25 A. I don't authenticate works for the

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1 M. McKenzie

2 public. I work with the artist directly.
3 I'm not someone who's getting a secondary
4 marking, picking up something at a flea
5 market, trying to authenticate it. I'm
6 working directly with the artist. Nothing is
7 more authentic than working directly with the
8 artist and having him sign.

9 Q. But did AIA, your company, issue
10 certificates that authenticated the works?

11 A. We usually don't do that. You
12 know, my feeling about that is that's usually
13 for companies that are lying. They get
14 certificates to try to prove they have
15 something, that makes no sense. You know,
16 the people on the ships do that all the time.
17 They create a big authenticity. They put the
18 thing in a gold frame. And what do you have?

19 You know, they'll say something
20 like, Sign in ink. Hand numbered in pencil.
21 Signed in ink. It's a poster, or the ink is
22 on -- they're misrepresenting what it is. I
23 don't misrepresent what it is. Silk screen,
24 this is how we do stuff, and we do it
25 directly with the artist.

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EXHIBIT D - 36

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1 M. McKenzie
 2 I've worked with 50 other artists.
 3 We all work the same. I've never issued
 4 Certificates of Authenticity.
 5 MR. MARKHAM: Mike, you've answered
 6 the question.
 7 A. I mean, I don't really. Unless
 8 somebody specifically asks for it, I don't --
 9 I don't put together Certificates of
 10 Authenticity unless someone asks for it.
 11 Q. There were times in Mr. Indiana's
 12 works that you did have to provide
 13 Certificates of Authenticity?
 14 A. Yes, when people asked for it.
 15 Q. And then how would you go about
 16 providing those Certificates of Authenticity?
 17 A. As the publisher, as most
 18 publishers do, I signed it as the publisher.
 19 Q. Have you ever provided, Signed by
 20 Thomas?
 21 A. Never, not that I can think of,
 22 unless he did it apart from me.
 23 Q. Did Indiana ever agree in writing
 24 that you could issue certificates signed by
 25 the publisher, yes or no?

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1 M. McKenzie
 2 A. I don't recall ever having that
 3 conversation, but he knew what the
 4 certificates looked like because I gave him
 5 certificates when he asked for it. It wasn't
 6 signed by him. It was signed by me.
 7 MR. MARKHAM: Alex, if you're
 8 through with this exhibit, could you put
 9 it down because that will give us more
 10 scope for seeing each other. Thank you.
 11 Q. Are you aware of Thomas as his --
 12 with his role of Star of Hope, or as his
 13 power of attorney ever authenticating?
 14 A. Yes, he did authenticate. Under
 15 oath he authenticated BRAT. He authenticated
 16 WINE. So, yeah, I'm aware of those things.
 17 And back and forth, sometimes we had emails,
 18 iMails, some of which I've lost, some of
 19 which I have.
 20 And him stating, Yeah, Bob and I
 21 are very interested in this. Or sometimes he
 22 would say, I don't know if Bob is interested.
 23 I think it's a good idea. We'll see what
 24 happens. Or he'll say something like, I
 25 wouldn't bring this up now. Bob has too much

1 M. McKenzie
 2 on his plate. Let's hold on.
 3 So, you know, he was trying to do
 4 what someone who is the POA of a major art
 5 studio is supposed to do, which is make money
 6 for the studio, and that's how it goes.
 7 Q. And just to be straight about that,
 8 that was one of your goals as well, right, to
 9 make money, correct?
 10 A. Partly, but one of the things was I
 11 wanted to -- all the paintings that were
 12 missing from Bob's study, which Simon took,
 13 how is he going to have them -- I was very
 14 interested in there being a Robert Indiana
 15 museum. I had to put -- I was trying to
 16 convince him to do it in New York City. I
 17 was working with developers, and many times
 18 people were interested in doing either a
 19 museum of pop or a museum of Robert Indiana
 20 of HOPE and LOVE. But Indiana wanted it at
 21 his house. So, you know, part of it was
 22 trying to figure out how do we get this
 23 museum to go, and you can't really get it to
 24 go if you're missing all the works that
 25 people want to see.

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1 M. McKenzie
 2 So that was a motivation for doing
 3 a number of these things. Clearly, I wanted
 4 to try to make some money. A lot of it did
 5 not make money. A lot of it was things that
 6 I felt were important, and I committed to
 7 them and I felt that somewhere down the road
 8 it would make money. Life is not only about
 9 cash flow. It's also what you want to do,
 10 how much you enjoy it, and what you're
 11 holding onto going into the future.
 12 Q. That was a long answer. I just
 13 want to ask one specific follow-up, which is
 14 a very simple question.
 15 One of your goals was to make
 16 money, correct?
 17 A. One of them. I didn't always
 18 succeed.
 19 Q. And it goes without saying if that
 20 if you produce, just to give you an example,
 21 ten works that each sell for \$1000, you make
 22 more money than if you produce nine works
 23 that sell for \$1000, is that correct?
 24 A. That's simple math, yeah.
 25 Q. In your efforts to try to make

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1 M. McKenzie
2 money, you and Mr. Thomas would often discuss
3 different ideas that you both had of new
4 avenues that Mr. Indiana could explore,
5 correct?

6 MR. MARKHAM: Objection.

7 A. Yeah. Yeah. That was Thomas'
8 role, to run Indiana's estate. They have a
9 business, too. They want to make money.
10 That's what I assume, and I respected that.

11 Q. Sometimes he would have ideas, and
12 sometimes would you have ideas, correct?

13 A. Yeah. Sometimes Indiana would have
14 ideas.

15 Q. And you would discuss those ideas?

16 A. That's right.

17 Q. And sometimes the discussions did
18 not involve Indiana, correct?

19 A. That's right.

20 Q. You also acquired a machine that
21 allowed for the mass producing of
22 Indiana's -- the equivalent of Indiana's
23 signature, correct?

24 A. That's right. That was at
25 Indiana's request, actually at his demand.

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2 Indiana demanded it. I hated doing it. He
3 was the one who wanted to do it. He said he
4 was too old to sign. He had done -- he had
5 let it back up. Every time I went up there
6 with pieces to sign, he let it back up until
7 there was more than he wanted to sign.

8 And I said, Listen, this is either
9 worth something or nothing. They have to be
10 signed.

11 And he said, Well, you know, I do
12 all the LOVE sculptures by incision. I don't
13 sign those. It doesn't seem to help them or
14 them, I should say.

15 You know, let's sign mechanically
16 by incision. I've signed things with a
17 rubber stamp. I've signed things by just
18 having a -- you know, a raised seal. So you
19 got to figure out how to sign it, go get
20 something to sign it.

21 And I told him I saw a guy signing
22 stuff at the OK Harris, and I -- and they
23 were signing the stuff with this machine.

24 And then I called him up and said,
25 What about this?

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1 M. McKenzie

2 And he was like, I don't care how
3 you sign it. He even said at one point said,
4 I have a great idea. Andy Warhol's brother
5 signs his paintings by dipping a chicken foot
6 into red acrylic paint, and that's how he
7 signs. I have geese. What if I get a goose
8 foot, and I give you the goose foot and you
9 dip it in the paint --

10 MR. MARKHAM: You've answered his
11 question long since.

12 THE WITNESS: Okay.

13 Q. How did you get the machine?

14 A. You can buy it online.

15 Q. I'm not asking how a person could.
16 How did you get the machine?

17 A. That's how I got it, online.

18 Q. And did Indiana make this request
19 of you in writing?

20 A. No, but he has it in writing in the
21 in the wine and beverage contract that I can
22 sign anything anyway I want, and that
23 includes the machine, and the mechanical
24 means. That's in his contract with me, which
25 began as a WINE contract, and then morphed

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1 M. McKenzie
2 into a beverage contract because he wanted to
3 more.

4 So I said, well, how do we do --
5 (Reporter clarification.)

6 Q. I don't think this is responsive to
7 the question either, if we want to move on.
8 None of this is responsive, but if you want
9 to keep going.

10 A. No. Go ahead. I don't care. I
11 don't need to say anything.

12 Q. The question was: Did -- you said
13 that the signature machine -- Mr. Indiana
14 directed you to get it, correct?

15 A. Yes.

16 Q. Did he direct you to get it in
17 writing, yes or no?

18 A. Yes.

19 Q. So do you -- can you show me or
20 point me to the writing in which Mr. Indiana
21 before you got the machine directed you to
22 get the machine?

23 A. Yes. This is what it is, okay.

24 Q. Is there a Bates number you can
25 point us to?

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1 M. McKenzie

2 A. I don't know. It seems to be filed
3 in New York County Clerk 070120130723, p.m.
4 NYSCEF Doc No. 8, Index No. 653809/2019,
5 received NYSCEF 07012019.

6 MR. SPIRO: If we put a -- if we
7 mark the transcript at this point, John,
8 can we get a copy of this document?

9 MR. MARKHAM: Yeah. Can I -- I'm
10 not -- I hope you won't think it's
11 coaching the witness if I tell you --

12 MR. SPIRO: No, I don't -- no, no,
13 no. I do not want something that
14 might -- I might think is coaching the
15 witness, because I think I'm going to
16 think it is that, so let's take --
17 let's you and I speak after the
18 deposition.

19 MR. MARKHAM: Okay.

20 Q. And it's your testimony, sir, under
21 oath that the document you just referenced is
22 Indiana directing you before you acquired the
23 signature machine to acquire the signature
24 machine, that's your testimony?

25 A. I think, though -- I think I

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1 M. McKenzie

2 acquired the signature machine in 2014, and
3 this is dated March 31, 2012, so it would
4 have been probably two years until I bought
5 the machine.

6 Q. Your testimony is that that
7 contract or that document directs you to buy
8 the machine, correct?

9 A. It directs me to sign his name in
10 any way that I see fit, and he kind of forced
11 it to go with the machine.

12 Q. Did Mr. Thomas know about your
13 acquisition of the machine?

14 A. I'm sure he does now.

15 Q. Did he know about it at the time?

16 A. I think so.

17 MR. MARKHAM: Calls for
18 speculation.

19 A. I believe that one of the things I
20 said to Mr. Thomas when he came on board was
21 that Bow bought into Bob to use a machine to
22 sign certain things, and I hated it -- Bo
23 bought into Bob's story to sign things with a
24 machine, and that I hated it.

25 And Thomas said, Bob is perfectly

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1 M. McKenzie

2 capable of signing on (inaudible). So it
3 stopped -- it stopped a little bit before
4 that, but Thomas was diligent about
5 explaining to Bob that if we're doing things
6 to make money and they're not signed, we've
7 got nothing because an unsigned print --
8 there's no real value to it. It might be
9 worth \$50. But if it cost \$100 to make,
10 there's no reason to make it.

11 Q. Was the machine kept under lock and
12 key?

13 A. Yes.

14 Q. Was it a secret from any of the
15 staff of your company?

16 A. No.

17 Q. Was it secret from any of the staff
18 of Indiana's group?

19 A. No.

20 Q. Did Mr. Brannan know about this?

21 A. You'd have to ask him. I don't
22 know what Mr. Brannan knows.

23 Q. Did you ever discuss the machine in
24 his presence?

25 A. I had no reason to. The only time

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1 M. McKenzie

2 I've had presence with Mr. Brannan is when he
3 did my house closing. That was about it. I
4 never saw him at Indiana's. I never heard
5 Indiana reference him. I never met him after
6 that or before. At one point, I asked him if
7 he would actually takeover for Mr. Indiana,
8 and for some reason that did not transpire.
9 That was a -- and then Frumer stepped in.
10 F-R-U-M-E-R, stepped in, another lawyer.

11 Q. What is your opinion of
12 Mr. Brannan's handling of the estate since
13 the passing of Mr. Indiana?

14 A. Well, it seems like a lot of money
15 is being wasted, but it seems like it's being
16 more or less pushed by Morgan.

17 Q. Pushed by --

18 A. M-O-R-G-A-N.

19 Q. Do you have any other opinions that
20 you want to share about Mr. Brannan's handing
21 of the estate?

22 A. No.

23 Q. Has Mr. Brannan or the estate
24 alleged anything about you that's untrue?

25 A. Yeah. And they got it from

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1 M. McKenzie
2 Mr. Nikas, who said that Mr. Thomas was a
3 killer, and I was his accomplice. They kind
4 of parroted that. I think they realize now
5 that that was just Mr. Nikas' lie, and they
6 dropped a lot of that.

7 Q. Anything else that Mr. Brannan or
8 the estate has alleged about you that you
9 wish to respond to?

10 A. No. I think it's all worked out
11 now.

12 Q. Did they ever allege anything about
13 you that was untrue, other than what you've
14 already told me?

15 A. No. It was all parroting Mr.
16 Nikas' lies from what I can tell.

17 Q. Without where they got it or how,
18 is there anything else that they said,
19 wherever they got it from, was any of
20 their -- was any of their other allegations
21 against you untrue?

22 MR. MARKHAM: Objection.

23 A. I answered that. No.

24 Q. No, is your answer?

25 MR. MARKHAM: Objection.

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2 A. I don't recall. I don't know.
3 It's all worked out now, so it doesn't
4 matter.

5 Q. Who is Katherine Casey? Who is
6 Katherine Casey?

7 A. She was a girl who worked for me
8 for a short period of time. Her job was
9 mainly to take dictation and occasionally to
10 work on an image and make it brighter. She
11 was out of Rhode Island School of Design, who
12 had a really good typing ability, really good
13 dictation ability and also a good ability to
14 Photoshop things, so that's what she did.

15 She got married, I guess, and I
16 haven't seen her since 19- -- well, excuse
17 me, 2000 -- I'm going to say 2013, 2014,
18 something like that. I'm not really sure
19 when she worked. It was quite a while back.

20 Q. Have you ever seen her video that
21 she posted to Instagram where she says,
22 referring to you, My boss makes me do this,
23 "this" meaning signing using the ghost
24 writing machine?

25 A. Yes. And she called up someone in

1 M. McKenzie

2 my studio and said she was high, she did
3 that, she was ashamed of it, she wished she
4 didn't say it. It was just a goof. She was
5 looking to put something up on YouTube.

6 And she also said, Please don't
7 call me again.

8 I tried to get her to send whatever
9 she had, anything to comply with this, and
10 she eventually said to someone in my studio I
11 should stop harassing her.

12 Q. You have seen that video?

13 A. Pardon me?

14 Q. You have seen the video?

15 A. Yes. Have you?

16 Q. And in the video she says, My boss
17 makes me do this because Indiana is too old
18 to sign his works and if the cops ever come,
19 I'm singing like a bird and calling it
20 forgery, correct?

21 A. I guess. But she also said that
22 she doesn't know anything about what my
23 relationship with Indiana is because she
24 never met him, she was never involved in any
25 of the discussions. She didn't know any of

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1 M. McKenzie

2 the contacts. She didn't know how we got
3 that machine, why we got the machine. She
4 didn't know that Indiana authorized that
5 machine, because it's none of her business.
6 She was just a kid all the way down the
7 bottom of the line. Yeah. She was just a
8 kid. She was like a messenger in the firm.
9 She's not going to know how the firm works.
10 She's not going to know the contracts or my
11 relationship with Indiana or why. She did a
12 stupid thing as a kid. That's what kids do.

13 And she called up and said, I'm
14 really sorry I said that. I don't want to be
15 involved in this. I never should have done
16 that. It was just a goof. I was trying to
17 get something up on YouTube for my website.

18 You know, that's it. I could sue
19 her for that, by the way, but I'm not. She's
20 a kid. She made a kid's mistake.

21 Q. I didn't get an answer to my
22 question. I got an I guess, and then a long
23 response that was not responsive.

24 MR. SPIRO: Can you read back my
25 question.

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1 M. McKenzie
 2 (Record read.)
 3 A. Yes.
 4 Q. And then the follow-up question?
 5 A. What was the follow-up question?
 6 You lost me.
 7 Q. The next question was: In the
 8 video, yes or no, does she say, in substance,
 9 My boss makes me do this because Indiana is
 10 too old to sign his own works and if the cops
 11 ever come, I'm singing like a bird and
 12 calling it forgery, did she say that in the
 13 video, yes or no?
 14 MR. MARKHAM: Objection.
 15 A. Do you want to know why, or do you
 16 want to try to make up your own reasons?
 17 Q. I just want you to answer my
 18 questions under oath.
 19 A. Okay. So, go, make up a lie and
 20 stick with it. Go ahead.
 21 Q. The answer is yes?
 22 A. Yes. Did she sing like a bird to
 23 the police, and call it forgery? Are the
 24 police contacting me --
 25 MR. MARKHAM: Mike, you've answered

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1 M. McKenzie
 2 the question.
 3 Q. Yes or no, did you ever take any
 4 legal action against her?
 5 A. Not yet.
 6 Q. The answer is, no, you have not to
 7 date taken any legal action against her?
 8 A. No. She's a child.
 9 Q. The answer's no?
 10 A. The answer's no.
 11 Q. Pull up Tab 18, MAF, ending 55516,
 12 which I'm marking as Exhibit 3?
 13 (Exhibit 3 marked for
 14 identification.)
 15 Q. Take a moment to look at that.
 16 A. Yes.
 17 Q. You recognize that?
 18 A. I sure do.
 19 Q. What is that?
 20 A. That's the cover to The Book of
 21 Love from 1996.
 22 Q. Do you see Robert Indiana's
 23 signature on that?
 24 A. I do.
 25 Q. And can you scroll that up. And

1 M. McKenzie
 2 can you read the language that's written?
 3 A. The artwork as illustrated above
 4 and in any other color combination has never
 5 been authorized by me.
 6 Q. Do you agree with that statement?
 7 A. I already said, it is what it is.
 8 That's Simon pressuring Indiana to say
 9 something he doesn't want to say. He's got
 10 it in his loft, in his house. He owns the
 11 artwork. And this is Simon giving him some
 12 kind of lie to make him say something. And I
 13 again, appear LOVE is in the public domain.
 14 LOVE is in the public domain. That's what
 15 LOVE is.
 16 Q. Can we look at Tab 68, please.
 17 (Exhibit 4 marked for
 18 identification.)
 19 MR. MARKHAM: Exhibit 4? Is this
 20 Exhibit 4?
 21 MR. SPIRO: Yes.
 22 Q. And can we go down? So this is --
 23 AMER 1626 is the Bates. If we go to the top
 24 email.
 25 Do you recall this conversation

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1 M. McKenzie
 2 with the subject line, Sensitive Situation
 3 That Needs Your Attention?
 4 A. Yes, I do. It was Evelyn --
 5 whatever her name is -- Salama-Caro, if
 6 that's her real name, trying to get in and
 7 make trouble for something that Indiana was
 8 unbelievably proud of, a show at the Four
 9 Seasons, which is undoubtedly the most
 10 important restaurant in the history of art,
 11 showing Picasso and Rosco and Indiana, and
 12 all of a sudden somebody is coming along
 13 trying to get into a client's head that
 14 Indiana didn't know anything about this. And
 15 that's a complete lie. Indiana had it in his
 16 house as well.
 17 Q. So there were doubts raised about
 18 the authenticity of the works, correct?
 19 A. Yes. Evelyn Salama-Caro, who like
 20 Simon Salama-Caro and Mark Salama-Caro were
 21 doing everything they could to slander my
 22 business.
 23 Q. So there were concerns raised and
 24 doubts raised about the authenticity of the
 25 works that you had to respond to, correct?

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1 M. McKenzie

2 A. By Evelyn Salama-Caro, who has no
3 right to talk about my work. And we have
4 pictures of him with it too, by the way -- of
5 Indiana with the work.

6 Q. And what does that mean to you?
7 You've said it a couple of times today, that
8 you have a picture of Indiana with the work.

9 What is the significance of that?

10 A. It authenticates it. It's Indiana
11 asking Jamie or me or somebody else to take a
12 picture of him with it because he wants to
13 have it for his own archives because that's
14 his work. He has been doing that since 1958.
15 He's got I don't know how many of these
16 11-by-17 books. They're filled full of
17 pictures of him with the work. One of the
18 highlights of his life was going to the Four
19 Seasons to do a show of his work.

20 Q. Right. But how did having a
21 photograph of him with the work or him
22 signing the work help you with
23 authentication?

24 MR. MARKHAM: Asked and answered.

25 MR. SPIRO: It's not a proper

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1 M. McKenzie

2 objection, John, and you know it, so
3 noted.

4 Q. Answer my question.

5 MR. MARKHAM: I'm sorry. I don't
6 believe that's an improper objection.

7 MR. SPIRO: It is an improper
8 objection during a deposition. So it's
9 noted.

10 Q. Mike -- it's noted -- Mr. McKenzie,
11 please answer the question.

12 A. Anyone in their right mind could
13 see that the artist signing a work and/or
14 posing with the work is going to say that's
15 the artist's work, especially if they can
16 identify it as the artist's work, yeah.

17 Q. And so those photographs would be
18 valuable in a situation like this in which
19 there's multiple people claiming they have
20 the rights over certain works to prove that
21 they actually had Indiana's blessing to
22 authorize the work, right?

23 A. Yes.

24 Q. And would you agree with me that in
25 the marketplace there's a difference between

1 M. McKenzie

2 Mr. Indiana personally authorizing a work and
3 Mr. Thomas authorizing a work on
4 Mr. Indiana's behalf?

5 A. No. I mean, legally, that's not
6 true. If you're a lawyer, you know that's
7 not true so I don't know why you're really
8 asking me that question.

9 Q. Well, rather than lecturing me, why
10 don't you just answer my question.

11 Is there's a difference --

12 A. No.

13 Q. Is there's a difference --

14 A. No.

15 Q. Is there's a difference in your
16 view --

17 A. No.

18 Q. And your testimony as somebody in
19 and around the art world is that there's no
20 difference in the marketplace if it's
21 Mr. Indiana authorizing the work or
22 Mr. Thomas authorizing work on Mr. Indiana's
23 behalf?

24 MR. MARKHAM: Objection.

25 Q. Is that your testimony?

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1 M. McKenzie

2 A. Once the person, the POA, my
3 understanding is they then have the authority
4 to sign checks, to authorize books,
5 production. That's their job, in fact, is my
6 understanding, is that the artist has
7 determined -- and this has happened many,
8 many times, that the artist has determined
9 that he's not making the best decisions, he's
10 been doing it a long time, he would like to
11 take a step back from everything, and he's
12 entrusted somebody that he really believes
13 could do a better job at this than him, and
14 then he signs them off as the POA, which, in
15 Indiana's case, my understanding -- I have
16 not seen this, but my understanding is that
17 he wanted it to be so authentic that Indiana
18 had involved Jamie and hired him not simply
19 to run his business but to be his POA, and
20 then to continue after his death as the CEO
21 of his estate that he brought on and, I
22 believe, paid for seven people, one of whom
23 may have been James Brannan. I've never
24 gotten a full disclosure.

25 But my understanding is seven

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1 M. McKenzie
2 people and a camera crew videotaped Indiana
3 showing that he was sound of mind, that he
4 was making a good decision, that it was his
5 decision, that nobody else asked him to, and
6 this is what I was told by Jamie Thomas and
7 Indiana. So under those circumstances, as I
8 understand it, and every attorney I spoke to
9 understands it, the person who has that kind
10 of authority has the authority to assign
11 things.

12 Now, it didn't really happen very
13 often because I had a house next to Bob's,
14 and I was able to see him, so I could
15 authenticate back to Bob, You like this too?
16 And he'd say we're all good. The Dylan book
17 is an example. Bob was 100-percent thrilled
18 by that. I don't know what else you're
19 talking about. I can't think of anything we
20 did that Bob wasn't involved in, too. I
21 can't -- I'm trying to think of anything.
22 Nothing comes to mind.

23 Q. Did you or your staff have a system
24 of altering photographs?

25 A. Photoshop is something we do all

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1 M. McKenzie
2 the time, and we alter photographs for
3 different reasons. Press reasons. We'll put
4 together things, try to make things brighter.
5 If we have shots from the democratic
6 convention, you know, we'll collage
7 something. You know, we'll put Bruce
8 Springstein -- if we know Bruce Springstein
9 was at the democratic convention, and we
10 missed a shot of him with the HOPE, we might
11 fill it in. We worked on the HOPE book. A
12 lot of it was collaged.

13 And, yeah, I do books and I have
14 since I'm a teenager, and we've worked with
15 collage -- you know, early on we worked with
16 air brush, which is how they were doing it
17 pre Photoshop, and now in the modern world
18 it's Photoshop, so, yeah, we do that all --
19 every day, correct.

20 MR. MARKHAM: Mike, I know you're
21 trying to be helpful by going beyond the
22 question, but he just asked if you had a
23 process for doing it. You're now
24 explaining the times you've used that
25 process.

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2 A. Well, the process is called
3 Photoshop --

4 MR. MARKHAM: Answer the question.
5 And if he wants to go on, he can ask
6 you.

7 THE WITNESS: Okay.

8 A. Sorry, go ahead.

9 Q. Have you ever used that process to
10 add a piece of artwork to a photograph that
11 wasn't originally in the photograph?

12 A. All the time.

13 Q. And what's the purpose of doing
14 that?

15 A. Well, if it's the press, for
16 example, advertising, the press, you want to
17 do that, you know, and everyone does it
18 because you want -- magazines, newspapers,
19 ads in magazines, gifts for people, you know,
20 you do that all the time, and everyone does
21 it.

22 Q. What about to prove that
23 Mr. Indiana signed or authorized a work, have
24 you ever done it for that purpose?

25 A. No. It was not done -- I know

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1 M. McKenzie
2 exactly what you're talking about. It wasn't
3 done for that purpose. It was done as a gift
4 for Johnsonville. That's all it was.
5 Q. Why don't you explain what you're
6 talking about, since you seem to be
7 anticipating my next question.
8 A. We have Indiana with something or
9 other, with HOPE or BRAT or whatever it was,
10 and we've done that a number of times. You
11 know, we do it for books. That one was done
12 to give a present. We wanted -- because when
13 I did the BRAT piece with Indiana, I didn't
14 get a chance to photograph it because I was
15 holding it for Indiana to look at, and Jamie
16 took the pictures and then I didn't get them,
17 so we wanted to send something to Johnsonville
18 to have for their wall.

19 And it was a little artwork. So we
20 had somebody here, and I don't recall who --
21 I think -- I don't recall who the person who
22 did it, but it was one of the Photoshop
23 girls. They put together a piece with BRAT
24 and Indiana. It was -- the sole intention
25 was for Johnsonville to have something for

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1 M. McKenzie

2 their wall while they were waiting for the
3 big sculpture.

4 Q. And so one of these, as you call
5 them, Photoshop girls, placed the BRAT work
6 into a photograph of Indiana in a position
7 that made it appear that Indiana was signing
8 it live then, correct?

9 A. I don't think it was signing. I
10 think he was just holding it. I don't
11 recall, but I believe they -- because most of
12 what he does is a square in the same size, so
13 we were able to take out probably what was
14 HOPE and replace it with BRAT, and we did
15 that because I was embarrassed that I had no
16 photographs of him with BRAT, so I wanted to
17 give him something, so we made it.

18 Q. And that was done with your
19 authorization, right?

20 A. A hundred percent, yes, a thousand
21 percent.

22 Q. And your company, AIA, you're the
23 CEO, right?

24 A. That's right.

25 Q. The buck stops with you, right?

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1 M. McKenzie

2 A. You can ask three more ways, you'll
3 get the same answer, yes.

4 Q. And your testimony is that the
5 reason that you placed it there is that you
6 photoshopped that photograph to place the
7 BRAT image there was simply to do that for
8 Johnsonville?

9 A. Yes. And then they then use it --
10 use it for promotion, publicity. It's just
11 like anything else. You think all the things
12 you get from a movie company aren't altered?

13 Q. Did you ask Mr. Indiana's
14 permission to do that?

15 A. Well, Mr. Thomas explained that,
16 you know, he didn't know what he did with the
17 photographs so -- he didn't know what he did
18 with those photographs, so I wasn't able to
19 get them to send them to Johnsonville, so that
20 was the only alternative. And he knew that
21 something had to be done. That's what I did.
22 He was the (inaudible).

23 Q. Right. So you did not discuss that
24 with Mr. Indiana, correct?

25 A. No. I didn't think he would want

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2 to have anything -- not worth his time. He
3 was old. His time was valuable.

4 Q. It wasn't worth asking him that
5 simple question, Is it okay if I Photoshop a
6 different piece of art in a photograph that
7 makes it look like you're in front of it when
8 you really weren't?

9 You didn't think that simple
10 question was worth his time?

11 A. No, because you don't know Indiana,
12 but there are thousands of people who have
13 tried to call him, including people from The
14 Met, The Modern, and everywhere else and they
15 would get no return calls. So you have to do
16 what you need to do because that's how he is,
17 and he has been that way since I know him,
18 since 1971.

19 Q. The purpose that you have stated on
20 the record for doing that, "doing that"
21 meaning inserting the BRAT image and
22 digitally imposing it into the other
23 photograph, was to give -- in essence to give
24 Johnsonville a memoir, a photograph, just so
25 that they would have it, correct?

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1 M. McKenzie

2 A. A hundred percent.

3 Q. Was there any other purpose?

4 A. No. Would I have used it as a
5 publicity thing, probably because that's what
6 publicity is. It's like trying to get
7 something out there in a way that makes some
8 kind of sense. Like Indiana is a tough guy
9 to get publicity with because he doesn't show
10 up. And, besides, the BRAT case is settled.
11 I don't know what you're trying to do. Are
12 you trying to get Mr. Nikas in a series of
13 lies back into the truth, is that what you're
14 trying to do?

15 Q. Are you done?

16 A. Are you?

17 Q. I'm not carrying on and on and
18 talking and talking --

19 A. You are.

20 Q. -- not answering questions.

21 A. I answered the question, and
22 otherwise shut up.

23 Q. So when you say you use it for
24 publicity, can you explain what you mean by
25 that?

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1 M. McKenzie

2 A. When people get a portrait of
3 somebody for publicity, if it's
4 Bruce Springstein, for example, they might
5 want to get him in front of a sign that says
6 Born to Run, and they have never taken that
7 picture. And it's an artist mistake, this is
8 his most famous thing. I did a book on
9 Billy Joel called Piano Man.

10 And when they did the cover they
11 were like, Look, we need a picture of him
12 with the piano with a sign that says Piano
13 Man. And you hire an illustrator or whoever
14 to design the cover and make it. This is how
15 it works. You know, you're trying to do
16 publicity. They have a knee-jerk reaction to
17 something, whether it's Bruce Springstein or
18 Billy Joel or Robert Indiana, and you put it
19 in, trying to get it out as a publicity
20 thing. It has nothing to do with
21 authenticating BRAT -- it has zero to do with
22 authentication. It has everything to do with
23 publicity, and giving a gift to Johnsonville.
24 People do it every day. There are PR
25 agencies that their entire job is to make a

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2 photograph or illustration that will get into
3 the newspapers as many times as possible.

4 Annie Liebowitz, if you know who
5 that is, takes out two people with computers,
6 takes 20 photographs of the same person,
7 glues it all together and puts a background
8 on it -- Annie Liebowitz takes out men with
9 computers who then -- she sends all of the
10 photographs that she shoots in a day into the
11 computer, and they say, This one as a good
12 hand, this one has a good ear, this one has a
13 good nose, this one has a good eye, and if we
14 put the Rocky Mountains behind it, it's going
15 to look like a great John Denver portrait.
16 And they threw it all together and it's in
17 Vanity Fair. Do you want to sue her?

18 Q. Are you done?

19 A. Yeah.

20 Q. The altered image that we're
21 discussing, did you give it to anybody in the
22 media?

23 A. I did not.

24 Q. Did anyone on your behalf give to
25 the media?

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2 A. Not on my behalf.

3 Q. On whose behalf?

4 A. Apparently, Johnsonville gave it to
5 the media. That's my understanding. I mean,
6 I don't know how else it got there. It
7 wasn't from my office.

8 Q. And part of the intention of
9 sending that to Johnsonville was also to
10 authenticate the work, correct?

11 A. Incorrect.

12 Q. Johnsonville didn't raise concerns
13 with you that the work may not be
14 authenticated by Mr. Indiana personally, they
15 never raised that concern?

16 A. Not until Mr. Nikas tried to
17 convince them that there was a problem, then
18 they raised concerns. Prior to that, Frank
19 Verpoorten who was their emissary had met
20 with Indiana numerous times, both in
21 person -- V-E-R-P-O-O-R-T-E-N, who we
22 understood to be their consultant, and I
23 understand that they paid him in art. Now, I
24 don't really know the back stage of what went
25 on but, that was my understanding. He had

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1 M. McKenzie

2 been to Vinalhaven, I believe, three times to
3 meet Indiana, and then called him apart from
4 me on the phone several times as well.

5 So they had no doubt that they
6 would be on direct with Robert Indiana. They
7 had no doubt that I had worked with Indiana
8 for years, and they had no doubt that Indiana
9 had gone back and forth with them, including
10 at the very end Verpoorten had a long
11 conversation with Indiana where Indiana
12 defended the fact that the A in BRAT
13 shouldn't be filthy because the Johnsonville
14 people were assuming that he was going to
15 tilt the O, and, in fact, they saw an early
16 drawing of the tilted A as if it were an O
17 and assumed that's how it was going.

18 Indiana at the last minute changed
19 it. I hated that idea, but, again, it's his
20 art. I don't have a way of -- I can't win
21 the argument. He is adamant about it going a
22 certain way. That's the way it's going to
23 go. And Verpoorten also argued with him, he
24 says, for an hour on the phone, and finally
25 gave up, as I did.

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2 So Indiana was the one who came up
3 with B-R-A-T, not me, not Verpoorten, not
4 Thomas, not Johnsonville. Johnsonville wanted
5 to do Bratwurst and I, frankly, turned it
6 down. Indiana was ready to do it. Indiana
7 wanted to do it as stacked letters.

8 I just said, That's just a horrible
9 (inaudible) to Indiana.

10 How it became BRAT was actually my
11 daughter who was into punk rock said that she
12 thought -- my daughter is into rock and roll.
13 And they have a group of boys called Punks.

14 And she said, Well, BRAT would be a
15 good name for all the girls, and I thought,
16 Gee, that's an interesting thing. In fact,
17 we talked about doing a series of T-shirts
18 and promotions that would say Love me, Love
19 my BRAT.

20 Q. Can you explain to me why these
21 conversations with your daughter you think
22 are responsive to my question?

23 A. Because I'm telling you how it
24 turned from Bratwurst to BRAT.

25 Q. Did I ask you how it turned from

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1 M. McKenzie

2 Bratwurst to BRAT?

3 A. Well, it's implicit in what you
4 asked me insofar as I can tell.

5 Q. How can -- can you explain that to
6 me, how was that implicit? Do you want us to
7 read back the question, and you can think
8 again about that answer?

9 A. Well, go to the next question, how
10 about that.

11 Q. Is it your testimony under oath
12 that Johnsonville discussed the BRAT image
13 with Mr. Indiana directly, yes or no?

14 A. Through their agent, Frank
15 Verpoorten, V-E-R-P-O-O-R-T-E-N, he was their
16 agent, and he directly spoke with Indiana,
17 including without me.

18 Q. Despite these conversations and
19 whatever the cause, Mr. Nikas or otherwise,
20 Johnsonville ultimately had concerns about the
21 authenticity and Indiana's blessing on the
22 work, correct, and they raised those concerns
23 to you?

24 A. Yes.

25 Q. And after they raised those

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1 M. McKenzie

2 concerns, you provided them with a photograph
3 that showed Mr. Indiana with the BRAT work,
4 correct?

5 A. No. No, no, no. They were given
6 that way before the concerns. That was just
7 a gift to them while they were waiting for
8 the BRAT sculpture to be finished. The
9 concerns about the BRAT sculpture were after
10 it was done.

11 Q. When you gave it to Johnsonville,
12 did you tell them that it was a digitally
13 altered photograph, yes or no?

14 A. No, I don't have to tell them that.

15 Q. Whether you have to tell them or
16 not, you didn't tell them, correct?

17 A. I told them it was a present from
18 us to them while we were waiting for the
19 sculpture to be finished.

20 Q. Yes or no question.

21 Did you tell them whether or not
22 the photograph was digitally altered, yes or
23 no?

24 A. No. They were buying a sculpture
25 not a print.

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1 M. McKenzie

2 Q. Do you know whether or not if you
3 had told them that the photograph was
4 digitally altered, they would have reneged on
5 the deal?

6 A. I doubt it. It's just hearsay.
7 That doesn't mean nothing.

8 Q. You don't know that, correct?

9 A. No one does. Do you?

10 Q. You don't know that.

11 And how much money did you make on
12 the BRAT sculpture?

13 A. I would have to see the records and
14 figure out how much it cost and what I
15 returned.

16 Q. More than \$10,000?

17 A. More than \$10,000.

18 Q. More than \$100,000?

19 A. Maybe.

20 Q. Was that a large sum of money for
21 you at the time to earn on a single
22 sculpture?

23 A. Not particularly. We undersold it
24 compared to a HOPE or a LOVE. And it ended
25 up costing more because we had to do a lot

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1 M. McKenzie

2 more research.

3 Q. The royalty for BRAT earned by
4 Indiana was over \$320,000, correct?

5 A. Yes.

6 Q. You said earlier that Rosenbaum and
7 you had issues regarding his concerns about
8 authenticity and the replication of
9 sculpture.

10 Do you remember that conversation
11 we had?

12 A. Yeah, something that he generated,
13 that was much later, though.

14 Q. Right. But it's not your testimony
15 that his concerns were based on anything
16 Mr. Nikas did, correct?

17 A. No.

18 Q. He was just somebody -- his
19 disagreement with you had nothing to do with
20 Mr. Nikas, correct?

21 A. Zero.

22 MR. SPIRO: Let's take a lunch
23 break.

24 THE VIDEOGRAPHER: The time is
25 12:43 p.m. We are off the record.

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1 M. McKenzie

2 (Recess.)

3 AFTERNOON SESSION

4 (Time noted: 1:34 p.m.)

5 MICHAEL MCKENZIE, resumed and
6 testified as follows:

7 EXAMINATION BY (CONT'D.)

8 MR. SPIRO:

9 THE VIDEOGRAPHER: The time is 1:34
10 p.m. We are back on the record.

11 Q. Good afternoon, Mr. McKenzie. I
12 have a few follow-ups from things you said
13 this morning that I sort of want to move
14 through as quickly as possible.

15 In 2011, you said that you sat down
16 with lawyers who were reviewing the MAF
17 contracts.

18 Who were those lawyers?

19 A. Jeffrey Robinson and Mark Rammond,
20 R-A-M-M-O-N-D, I believe.

21 Q. You're aware that the 1999
22 agreement covers the Nice catalogue and
23 Sheehan Catalogue images, correct?

24 A. I am now. I don't know if I was
25 then.

1 M. McKenzie

2 Q. You don't know one way or another?

3 A. No. They were focusing on how to
4 get Bob out of Morgan. I don't think they
5 were focusing on what that said.

6 (Reporter clarification.)

7 A. Out of the Morgan debacle.

8 Q. But you were aware at that time,
9 sir, were you not, that at least that
10 contract covered others works beyond LOVE?

11 A. Yes, but I was also aware that
12 those other works also were in public domain.

13 Q. Right. So you're talking about
14 EAT, for example?

15 A. Public domain.

16 Q. So your position then and now is
17 that, sure, it's in a contract but the
18 contract doesn't matter because it was in the
19 public domain, that's your position?

20 MR. MARKHAM: Objection.

21 A. Well, it's not in the contract.
22 It's only saying you're entitled to whatever
23 he owned.

24 It's like me saying, I'm going to
25 give you all the buildings that I own on Park

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1 M. McKenzie

2 Avenue from 57th Street to 72nd Street.

3 It doesn't mean anything. If you
4 want to believe you can knock on on all the
5 doors and say, I own your building, you can
6 try, but it's just not going to happen. Same
7 thing with --

8 MR. MARKHAM: (Inaudible.)

9 Q. You have things that nobody knows
10 whether to believe or not.

11 The photograph that you took or
12 that was taken with your blessing at your
13 firm regarding the BRAT photo, that ended up
14 in a New York Times article, correct?

15 A. I'm not sure where it ended up. I
16 know Johnsonville put it into play in
17 magazines. I did not. That was not -- and
18 and if it did, I still don't care because it
19 was really just trying to show that Indiana
20 was involved in BRAT. That's all it is.

21 Q. Right. My question isn't whether
22 or not you care.

23 You didn't hear me ask that
24 question, correct?

25 A. You're asking me if I care, is that

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1 M. McKenzie
2 what you're asking?
3 Q. No. I'm asking you: When I asked
4 my question, did my question ask you whether
5 or not you cared?
6 A. I'm not sure, but I don't care.
7 Q. Why don't we put up -- actually,
8 withdrawn.
9 Are you aware whether or not that
10 photograph that your office altered ended up
11 in any media outlet at all, do you know that,
12 yes or no?
13 A. Yes.
14 Q. And do you know that the reporter
15 says, you told the reporter that the image
16 may have been altered; do you recall that?
17 A. Yes, because it was altered. I had
18 to confirm with my staff if it was altered or
19 not. I didn't know if it was.
20 Q. Right. But at first you told the
21 reporter it may have been altered, correct?
22 A. Yeah, because I had to confirm who
23 did it and why so that I could answer
24 honestly.
25 Q. And you can't give us a name of who

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1 M. McKenzie
2 altered that photograph?
3 A. Honestly, no, because I have three
4 or four different people that work for me
5 that specialized in Photoshop, and I don't
6 know which one at that time worked on it. I
7 have no idea. But what would be the
8 difference?
9 Q. Well, you've had time to prepare
10 for your case, correct?
11 A. Yeah.
12 Q. And you know this -- you knew that
13 this was an issue that was going to come up
14 at this deposition, correct?
15 A. Yeah, but I think it's a moot
16 point and a bunch of lies, so it doesn't
17 really effect me that much.
18 Q. All right. The same question
19 again. It's a yes or no question.
20 Did you know that this topic was
21 going to come -- did you expect that this
22 topic would come up at this deposition?
23 A. How would I know. I mean, I don't
24 write your questions.
25 Q. My question. My question is: Did

1 M. McKenzie
2 you, Mr. McKenzie, expect for it to come up,
3 not that you knew, did you expect for it to
4 come up at this deposition?
5 A. I have no idea.
6 Q. Have you done anything --
7 A. It doesn't --
8 Q. Have you done anything --
9 A. I --
10 Q. -- since this litigation began to
11 try to ascertain what member of your staff
12 altered this photograph, yes or no?
13 A. No, I'm finished with BRAT. It
14 doesn't mean anything to me. That case has
15 settled.
16 Q. At the time in which this became an
17 issue in the media, when you were interested
18 in BRAT, at that time, did you try to
19 ascertain who at your office altered the
20 image?
21 MR. MARKHAM: Objection.
22 A. It didn't really seem important to
23 me. I mean, I just needed someone to confirm
24 that someone did it, but I didn't know who it
25 was. It didn't seem important to know who

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1 M. McKenzie
2 did it. It didn't seem like a big thing. It
3 was a gift. Somebody took it out of
4 proportion and out of context. And when you
5 take something out of context, it's your
6 problem not mine.
7 Q. How much did Johnsonville ultimately
8 pay for the BRAT sculpture approximately?
9 A. I don't recall.
10 Q. You don't even have an
11 approximation?
12 A. No.
13 Q. Was it seven figures, the --
14 A. Yes. And it was probably about the
15 same to make. It costs a lot to make a
16 sculpture of that size, and it was very, very
17 difficult on my staff because we had to plug
18 into it so many times. We had never done
19 anything that big. It was a huge, huge task.
20 It went on and on and on, like -- and it was
21 really not something I would want to do
22 again.
23 Q. Is there any evidence that you can
24 provide that Indiana authorized the making of
25 BRAT?

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1 M. McKenzie

2 A. Well, there's Jamie Thomas' sworn
3 testimony. There's the \$320,000 plus that he
4 got. There's all the drawings that he did.
5 This Frank Verpoorten -- I've spelled his
6 name a few times -- who was a representative
7 of Johnsonville who spent time, both in person
8 and on the phone, with both Thomas and
9 Indiana, visited Indiana in Vinalhaven,
10 stayed at Vinalhaven, met with him more than
11 once. And then actually was calling him,
12 which I didn't find out until this litigation
13 began, had called him several times on his
14 own without me or Jamie Thomas on the phone,
15 and he -- the text or the summary of that
16 conversation was provided to Johnsonville, who
17 then provided it to me. So, yes, there is an
18 awful lot of stuff.

19 Q. Do you have that text message?

20 A. Yes, I do. It's not in front of
21 me.

22 Q. Have you turned it over in
23 discovery?

24 A. I believe it's been turned over. I
25 know the estate has it all and Johnsonville

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1 M. McKenzie

2 has it all and I have it all, too. So I'm
3 assuming it's somewhere in discovery, all
4 that stuff that Johnsonville had.

5 Q. Did you consider the doctored
6 photograph that you provided Johnsonville, do
7 you consider that to be proof that Indiana
8 authorized the making of BRAT?

9 A. No. It has nothing to do with
10 anything. That's just a publicity photo.

11 Q. Can we put up Tab 101, Page 4.

12 MR. SPIRO: This is Johnsonville
13 Discovery 0193, and I will mark this as
14 Exhibit 5.

15 (Exhibit 5 marked for
16 identification.)

17 Q. This is an email from September 17,
18 2018 from Johnsonville.

19 And it says in midway down: I
20 called Michael McKenzie myself to get the
21 background on this photo that he sent us last
22 fall, and here's what we know. He took this
23 photo of Mr. Indiana signing our print at
24 his, McKenzie's studio, in Vinalhaven Maine
25 late last year.

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1 M. McKenzie

2 Do you see that sentence?

3 A. I don't recall saying that. That
4 may be what she thought she heard, and
5 maybe -- she's a publicist as well, and she
6 may have been trying to get it for publicity
7 purposes. I don't know. I didn't recall
8 particularly taking that photograph, although
9 I took a lot of photographs of Indiana. And
10 it was only -- I wasn't really thinking of
11 using a photograph for any purpose of
12 authenticity, unless he was signing
13 something, or whatever else, but I didn't
14 really need that because it had gone on for
15 almost two years, that process, back and
16 forth with Johnsonville's rep, going up there
17 and talking all the time to it -- talking to
18 Mr. Indiana over and over again. I really
19 didn't think that anyone could be so stupid,
20 frankly, to think that they could say that
21 Indiana didn't know about this when his
22 studio manager under oath says he did, when I
23 met with him probably 40 times about this,
24 when Johnsonville's representative was in and
25 out of there numerous times, so much so that

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1 M. McKenzie

2 he was comfortable calling Indiana without
3 even telling me. So if you can think that
4 somehow or another Indiana didn't know about
5 this, that's just really obnoxious is all
6 that is. That's just a filthy, dirty, scummy
7 lie, yeah.

8 Q. If you said this, it would have
9 been a lie, correct?

10 A. I may have thought that I took it.
11 I don't know. I mean, I take a lot of
12 pictures. And I couldn't remember what went
13 on until later when it became this big
14 circus. And then I sat down and I still
15 wasn't sure.

16 And I asked in the studio, Did
17 somebody author this, or did we have that
18 picture, because it was sent out. So I may
19 have said, Send some pictures to
20 Johnsonville, and they pulled it out and they
21 may have thought, Jeeze, we need to put this
22 in and do it.

23 I mean, I don't remember, you know,
24 whether or not I thought at that moment that
25 this happened, that I had taken that picture,

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1 M. McKenzie

2 or that somebody altered it. But then when
3 it came up I asked at the studio, Did
4 somebody alter it, and I was told yes. And
5 that's why I said, Let me check and find out
6 because the guy was from the New York Times.

7 And I got back to him and I said,
8 Yes, that was altered at my studio. They put
9 it together. It's basically a Photoshop
10 collage.

11 Q. So you admitted it once you got
12 caught, right?

13 A. No, I wouldn't say I got caught. I
14 just didn't know. I really don't care. It's
15 something that we do every day, and everyone
16 else does, too.

17 Q. You expect people to believe
18 that --

19 A. Yeah, (inaudible).

20 Q. -- your explanation that you just
21 gave, you expect people to believe that?

22 A. A hundred percent because everybody
23 at every magazine alters these things all the
24 time. What's it got to do with the sculpture
25 exactly?

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1 M. McKenzie

2 Q. So it's your testimony that people
3 all the time alter documents, give them to
4 potential buyers --

5 A. It's not --

6 Q. Sir, let me finish my question.
7 People all the time alter
8 documents, give it to potential buyers. The
9 buyer believes one thing, enters into a
10 transaction, turns out the whole thing was a
11 lie, do you think that happens all the time?

12 MR. MARKHAM: Objection.

13 A. It's not what happened. That's a
14 leading question. It doesn't mean anything.
15 It wasn't a document. It's a photograph.
16 It's done all the time for magazines every
17 day. 6,000 people are doing it today.

18 Q. A lot of the answers that you gave
19 earlier for why certain things happened and
20 why certain things people accused you of
21 certain things, you blamed Mr. Nikas.

22 Did Mr. Nikas have anything to do
23 with your representations to Johnsonville in
24 this situation?

25 MR. MARKHAM: Objection.

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1 M. McKenzie

2 A. Yeah. He made up the story. He
3 was the one who started the story.

4 Q. So was -- if you said to
5 Miss Dlugopolski -- if you said to her that
6 he took the photo -- that you took the photo
7 of Mr. Indiana signing our print, if you said
8 that to her, Mr. Nikas told you to say that?

9 A. I don't know that I said that.

10 Mr. Nikas was the one who created all the
11 problems with BRAT. That's a fact, yeah.

12 Q. Yeah, but did Mr. Nikas have any --
13 if you did say that -- I'm saying you said
14 you might have said that. You can't swear
15 under oath you didn't say that.

16 A. That's correct.

17 Q. If you said that, did Mr. Nikas
18 have anything to do with causing you to say
19 that?

20 A. Probably because he was the one who
21 created all problems with BRAT, and then all
22 of a sudden I was called all this stupid
23 stuff over nothing when it was a publicity
24 photograph.

25 Q. Well, if you --

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1 M. McKenzie

2 A. When I send out a publicity
3 photograph, I don't expect that somebody
4 thinks the publicity photograph is true. I
5 mean, if you think that Robert De Niro is a
6 killer because he was in a certain movie and
7 is shown with a gun, then that's what you
8 believe. I can't stop you from believing it.
9 It's a publicity photograph.

10 Q. Whatever Mr. Nikas did it caused
11 people to ask you hard questions, they asked
12 you hard questions, and it turns out that
13 there was -- that there are some
14 inconsistencies, is that fair to say?

15 A. No.

16 Q. There's no inconsistencies in any
17 of the documents or representations that you
18 or your office has made regarding this
19 photograph?

20 A. No. I told everyone what --
21 exactly what it is.

22 Q. Does the number \$2.85 million sound
23 right for the amount Johnsonville paid for
24 this?

25 A. I don't know. I can't answer that.

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1 M. McKenzie
 2 Q. Do you have reason to dispute --
 3 A. I'd have to look at the documents.
 4 Q. Do you have any reason to dispute
 5 that number?
 6 A. I don't know what it was. I'd have
 7 to look it up. I thought it was actually
 8 more than that, to tell you the truth, or
 9 less, but what's the relevance? Are you
 10 trying to count my money?
 11 Q. The relevance is that a lot -- the
 12 relevance is, since you asked, a lot of
 13 people are concerned that because of your
 14 drive for money you're altering photographs
 15 and tricking people and adding numbers to
 16 series and doing all the other things we've
 17 been talking about here today. So that's why
 18 I'm asking you about how much money you want.
 19 MR. MARKHAM: Okay. Michael,
 20 that's not a question. It does not need
 21 to be answered.
 22 Q. Put up Tab 68. Can you highlight
 23 the relevant portion, please. This is
 24 already introduced.
 25 MR. MARKHAM: Can you identify it

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1 M. McKenzie
 2 for the record.
 3 MR. SPIRO: As soon as I get to the
 4 bottom of it, I can.
 5 AMER 1635.
 6 It's already in as --
 7 MR. NOSANCHUK: Four.
 8 MR. MARKHAM: Four.
 9 Q. While we're highlighting this
 10 section, another reason that you gave for
 11 certain people saying things about you,
 12 Mr. McKenzie, was that they were either high
 13 or drug addicts.
 14 Do you remember saying that earlier
 15 today?
 16 A. One person has that category, who
 17 worked for Robert Indiana. I don't recall
 18 people. I recall a person.
 19 Q. That's Mr. Hillgrove you're
 20 referring to?
 21 A. That's right.
 22 Q. And you said basically, in
 23 substance, he was an addict and you don't
 24 hire addicts and nothing he says can be
 25 trusted because he's an addict, right?

1 M. McKenzie
 2 A. I said, I don't hire addicts, and
 3 somebody who's a heroin addict has a
 4 propensity to say things that may or may not
 5 be accurate.
 6 Q. And you said you wouldn't hire a
 7 addict, right?
 8 A. That's right.
 9 Q. And then later we talked about an
 10 assistant of yours, somebody that worked in
 11 your office, I think you called her a
 12 Photoshop girl, who put up a social media
 13 post that also accused you of fraudulent
 14 behavior; do you remember that?
 15 A. And apologized for it. You left
 16 that out there.
 17 Q. Well, that's what you say.
 18 We don't have that in the evidence,
 19 do we?
 20 A. She wouldn't return any phone
 21 calls. Wants nothing to do with this. She's
 22 been giving information to a third party.
 23 Q. Right. She accused -- she publicly
 24 accused her former boss of fraud, and doesn't
 25 want to have anything to do with this,

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1 M. McKenzie
 2 correct?
 3 A. Right. She said she tried to --
 4 Q. And you're -- sir -- sir -- sir,
 5 there's no question pending.
 6 A. Okay.
 7 Q. No question pending.
 8 Q. The next question is -- this is how
 9 this goes --
 10 MR. MARKHAM: I have --
 11 Q. This is how this goes, question,
 12 answer, question, answer.
 13 MR. MARKHAM: For the record,
 14 excuse me, I have something to say.
 15 MR. SPIRO: This is not -- John,
 16 I'm talking. John, I'm talking.
 17 Q. This is how this goes, question,
 18 answer, question, answer.
 19 MR. MARKHAM: Now, I have something
 20 to say.
 21 MR. SPIRO: Sure. I have a feeling
 22 I know what it is because you've said it
 23 already, but you can say it again.
 24 MR. MARKHAM: I thought you weren't
 25 going to interrupt me, and I wasn't

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1 M. McKenzie

2 going to interrupt you. You finished --

3 MR. SPIRO: You weren't talking, so
4 now you can go.

5 MR. MARKHAM: I was talking. He
6 was in the process of giving you more of
7 an answer. You stopped him. That's
8 your choice, but the record will reflect
9 it. You can go ahead.

10 MR. SPIRO: The record will reflect
11 exactly how evasive he's been during the
12 entire deposition, it will.

13 MR. MARKHAM: I doubt it. I think
14 he's been cooperative --

15 MR. SPIRO: Sure.

16 MR. MARKHAM: He completed his
17 answers. You don't like the
18 explanations. I suggested that he not
19 do it anymore, and some of the times
20 he's doing it, some of the times he's
21 explaining his answers. He's answering
22 your questions.

23 Q. The explanation, to use your
24 lawyer's word, that you gave regarding why
25 your former employee or employee accused you

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1 M. McKenzie

2 of fraud publicly was that she was high at
3 the time, right, that's what you said earlier
4 under oath, correct?

5 A. She said she was goofing around,
6 and she regretted what she did. It was 1:00
7 in the morning, and she was just trying to
8 get on YouTube, something like that. But
9 it's coming to me from a third party. She
10 doesn't want to speak to me because she's
11 afraid that if she does, she's going to be
12 wrapped up in this case, which she doesn't
13 want to be -- anything to do with. That's
14 what she said.

15 Q. Question -- yes or no question.

16 Did you earlier testify under oath
17 that the explanation for her making the
18 statement accusing you of fraud publicly was
19 in part because she was high, yes or no?

20 MR. MARKHAM: Objection.

21 A. I don't want to incriminate her, so
22 I'll just pass on that. It's not -- I don't
23 have a vindictive personality on that. I
24 don't -- she did something very stupid, but I
25 don't really want to see her -- yeah. I

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EXHIBIT D - 51

1 M. McKenzie

2 mean, I have a written contract for that
3 stupid machine and it was Indiana's idea to
4 use it and my studio manager witnessed the
5 conversation numerous times, so whatever,
6 whatever you want to say.

7 Q. Again, your concern for the ex
8 employee that accused of you fraud publicly,
9 notwithstanding, the question remains, did
10 you earlier, just today, testify under oath
11 that part of the reason why she did it was
12 because she was high, did you say that under
13 oath just today, sir?

14 MR. MARKHAM: Objection.

15 A. Yeah. She smokes a lot of pot.
16 But then that's who she is.

17 Q. So the individual -- okay. The
18 individual that we were just talking about at
19 Johnsonville in the prior email that says
20 that you made that representation, which
21 turned out to be a lie --

22 A. Well, she made a couple of
23 representations that I didn't say.

24 Q. Okay. Well, one of them that we've
25 already talked about, which is that she said

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1 M. McKenzie

2 that that was a legitimate photograph, and we
3 know now it was a doctored photograph. The
4 woman who --

5 A. If that's what she says.

6 Q. Well, that's what she said. That's
7 what she said in writing, correct?

8 The representative of Johnsonville
9 says in writing you made that representation,
10 correct?

11 A. Yeah. And if I say in writing that
12 you said President Nixon or President Trump
13 should be shot in the head, and I say that
14 you said that, so what.

15 Q. I'm going to ask the question --
16 I'm going to ask the question again.

17 She made the representation in
18 writing that you said that, correct?

19 A. She did, yes, not me.

20 Q. Okay. Do you have any reason to
21 think or any evidence for us that she's a
22 drug addict, or she's high?

23 A. No. She's just a publicist, and
24 publicists like to get anything they can to
25 get publicity.

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EXHIBIT D - 52

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1 M. McKenzie
 2 Q. Any evidence --
 3 A. That's what publicists --
 4 Q. Any evidence that Mr. Nikas told
 5 her to write that statement?
 6 A. No.
 7 Q. Turning back now to Tab 68, Exhibit
 8 4: Gentlemen, my name is Greg Morris, and
 9 earlier this year I purchased two paintings.
 10 Instead, if you look down, I was contacted by
 11 a gentleman named Michael McKenzie, which
 12 made me question the authenticity of these
 13 works. I have heard --
 14 MR. MARKHAM: You're not reading
 15 that exactly --
 16 MR. SPIRO: Mr. Markham --
 17 MR. MARKHAM: You're not reading
 18 that exactly.
 19 MR. SPIRO: Mr. Markham,
 20 Mr. Markham, don't interrupt me. You
 21 can make a record after that I'm not
 22 reading it in order.
 23 MR. MARKHAM: Well, he --
 24 Q. I have heard some concerning
 25 information regarding Mr. McKenzie, which

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1 M. McKenzie
 2 made me question the authenticity of these
 3 works.
 4 Do you see that sentence?
 5 A. Yes.
 6 MR. MARKHAM: I'm instructing you
 7 that before you answer any question
 8 relating to this, that he allow you to
 9 read the entire thing since he's
 10 skipping around.
 11 Q. I'm asking you if that sentence is
 12 written on this paper. You want to keep
 13 reading, you can keep reading.
 14 Subsequently, I have asked for a
 15 letter from the Indiana estate or foundation
 16 or whatever authoritative entity stating that
 17 these works are, in fact, are by
 18 Robert Indiana and with his approval.
 19 Do you see that sentence, sir?
 20 A. Yes, I do. I do.
 21 Q. This is another person concerned
 22 about the authenticity of you and the work
 23 you're doing with Mr. Indiana, correct, yes
 24 or no?
 25 A. Yes. You want to know how that

1 M. McKenzie
 2 happened, or --
 3 Q. I don't. If I want to know
 4 something, I'll ask you another question.
 5 A. Okay. So make up your own story,
 6 and keep going. Go ahead.
 7 Q. I'll ask -- that's not how a
 8 deposition works. I ask the questions, and
 9 you answer the question.
 10 A. But then you're going to make up a
 11 story, as you know. Go ahead.
 12 Q. Any reason to think that Mr. Nikas
 13 told Greg Morris to say that in this email?
 14 A. It was Evelyn Salama-Caro who told
 15 him.
 16 Q. Not my question. Not my question.
 17 My question is: Did you have any
 18 evidence that Mr. Nikas told Greg Morris to
 19 write this email, yes or no?
 20 A. I don't know how he advised Emily
 21 Salama-Caro, I don't know.
 22 Q. But you don't have any evidence?
 23 A. Well, the fact is it was Evelyn
 24 Salama-Caro, and that's his client, so I
 25 don't know what transpires between a lawyer

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1 M. McKenzie
 2 and the person who created the problem. It's
 3 his client, so I don't know. You'd have to
 4 ask her if he told her to make up this story.
 5 You know, you'd have to ask him about that.
 6 Q. After -- do you recall -- are you
 7 still going?
 8 A. Stop stuttering, and ask your next
 9 question.
 10 Q. Do you recall receiving this email?
 11 A. Of course.
 12 Q. Why do you say "of course"?
 13 A. Because I recall it.
 14 Q. Needless to say, when I asked
 15 Mr. McKenzie a direct question, I was met
 16 with evasive answers.
 17 Do you see that sentence?
 18 A. Yes.
 19 Q. Does that remind you of anything
 20 we've talked about here today?
 21 A. No.
 22 Q. Has anyone else told you besides
 23 Mr. Morris that when you're asked direct
 24 questions, you give evasive answers?
 25 A. No. Mr. Morris was making it up

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1 M. McKenzie
2 because he had Evelyn Salama-Caro telling him
3 that she was the only person that could
4 authenticate Robert Indiana, which isn't
5 true.

6 Q. Okay. Was this the only person --
7 I asked you earlier whether anybody had asked
8 you a couple of questions, such as What we
9 are doing is waiting for you to respond in a
10 concise, accurate, consistent manner to our
11 wholly reasonable, cogent, simple questions
12 from the other day.

13 Does that sentence that I read you
14 earlier sound a little bit like, Needless to
15 say, when I asked Mr. McKenzie a direct
16 question, I was met with evasive answers.

17 Does that vaguely -- do the two
18 sentences remind you of each other, Mr.
19 McKenzie?

20 A. No, they don't.

21 Q. In fact, alarming so, Mr. McKenzie
22 made statements regarding the different
23 signatures on each work that I found even
24 more concerning. In speaking with my
25 attorney, Richard Gollup (phonetic), I

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1 M. McKenzie
2 pressed for more clarification, but Mr.
3 McKenzie has gone silent on me, instead
4 preferring to communicate with Miss Fiori.

5 Do you see that?

6 A. Yeah, because each one of them said
7 they were --

8 MR. MARKHAM: No, forget that. He
9 just asked you whether you saw it.

10 A. Yeah, I saw it.

11 MR. MARKHAM: You did because he
12 read it to you, and it's on the screen.

13 A. Right. I'm looking at it. It's
14 circled in blue.

15 Q. And you remember seeing it at the
16 time, correct?

17 A. I do. (Inaudible.)

18 Q. More people accusing you of being
19 evasive, right?

20 MR. MARKHAM: Objection.

21 Q. Right? It's a person accusing you
22 of being evasive, correct?

23 A. What's that?

24 Q. It's a person accusing you of being
25 evasive, correct?

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EXHIBIT D - 53

1 M. McKenzie

2 A. That's his opinion. I mean, I was
3 trying to help him.

4 Q. Not my question. Not my question.

5 My question is: Is this a person
6 accusing you of being evasive, yes or no?

7 A. I can't tell from this.

8 Q. It's a person calling into
9 question --

10 A. He is not saying I'm evasive. He's
11 thinking that my answers are evasive. That's
12 a different conversation. Evasive is I don't
13 answer the phone.

14 Q. Okay. But you're saying he's
15 accusing you of being one kind of evasive,
16 not the other kind of evasive, is that your
17 testimony?

18 A. That's not evasive. He doesn't
19 like the answer. What do you want me to tell
20 him? A lot of people who tell me things, I
21 don't like their answers, what should I say
22 they're giving an evasive answer?

23 Q. What about with the WINE project,
24 Hillgrove declaration, he says, McKenzie was
25 very angry because he said he arranged for

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1 M. McKenzie
2 the sculpture to appear in a magazine, but
3 Bob still said no. I witnessed this
4 conversation. As far as I'm aware, Bob never
5 authorized the WINE sculpture or any artworks
6 about WINE.

7 Have you reviewed that declaration

8 --

9 MR. MARKHAM: Where are you reading
10 from?

11 MR. SPIRO: It doesn't matter.

12 Q. I'm asking you: Have you read
13 Hillgrove's declaration, Mr. McKenzie?

14 A. I have a contract for the WINE.
15 Sean Hillgrove is dead -- I have a contract
16 for wine and beverages signed by Robert
17 Indiana. He was the one who wanted to do it
18 -- authorizing me to sign and do it any way I
19 possibly could. And, you know, I hate to say
20 it, but Sean Hillgrove was a lifetime heroin
21 addict, and I personally don't put much faith
22 in anything he says.

23 I even bought the autograph machine
24 to try to get this WINE thing done because we
25 didn't know where it was going to go.

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1 M. McKenzie
 2 Q. Are you done?
 3 A. I don't know. Sean Hillgrove is --
 4 you can't dig him up. Trust me when I tell
 5 you, not a viable witness.
 6 Q. Are you done?
 7 A. He was the one witness who was
 8 going go against -- all right. Go ahead. Do
 9 your thing.
 10 Q. I mean, if you want to keep going,
 11 Mr. McKenzie, I --
 12 A. Go ahead, go. Do whatever you
 13 want.
 14 Q. None of that answered my question.
 15 My question is: Did you review the
 16 Hillgrove declaration, yes or no?
 17 A. I just listened to what you said.
 18 I didn't review it at all.
 19 Q. I'm asking you: Have you ever
 20 before today reviewed the Hillgrove
 21 declaration.
 22 MR. MARKHAM: He just said, I
 23 didn't review it at all.
 24 MR. SPIRO: Mr. Markham,
 25 Mr. Markham, don't interrupt the

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1 M. McKenzie
 2 deposition.
 3 Q. Mr. McKenzie --
 4 MR. MARKHAM: No, no --
 5 Q. -- I'm asking you again, because I
 6 couldn't hear --
 7 MR. MARKHAM: No --
 8 Q. -- because your lawyer interrupted
 9 yet again. I'm going to start again.
 10 For the record, have you before
 11 today ever read or reviewed or had anybody
 12 read to you Hillgrove's declaration?
 13 A. No. That's the first time I'm
 14 hearing it, what you just read.
 15 Q. You were never aware before I read
 16 to you that Mr. Hillgrove declared under oath
 17 that the entire WINE project was basically a
 18 fraud on the marketplace.
 19 You never knew that Mr. Hillgrove
 20 had made that accusation under oath against
 21 you before?
 22 A. No. And he's a liar and I have the
 23 contract, so the contract speaks louder than
 24 a junkie's words.
 25 MR. SPIRO: Let's put up what we

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EXHIBIT D - 54

1 M. McKenzie
 2 believe is Mr. McKenzie's WINE contract
 3 that he keeps referring to.
 4 A. I never heard of it. No, that's
 5 not the one.
 6 MR. MARKHAM: Let him ask you a
 7 question, so we get the record
 8 correctly.
 9 A. Go on.
 10 Q. Is this the contract, which is --
 11 MR. SPIRO: I always need to see
 12 the Bates number. Do you have a Bates
 13 number?
 14 MR. NOSANCHUK: There's no Bates
 15 number. This is off the public docket.
 16 Q. Okay. So this is Document 91-5,
 17 filed 10/5/18.
 18 Is this the WINE contract that
 19 you're referring to?
 20 A. No.
 21 MR. SPIRO: And I'm marking this --
 22 I guess, I'm at Exhibit 6.
 23 (Exhibit 6 marked for
 24 identification.)
 25 A. Correct.

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1 M. McKenzie
 2 Q. Can you describe to me the WINE
 3 contract that you think authorizes your WINE
 4 works that Mr. Hillgrove says you're a liar
 5 about?
 6 A. Well, of course, this does, but
 7 then it was up dated on --
 8 Q. Well, let's stop on this, then.
 9 Let's stop on this. If this is the contract
 10 that you're saying authorizes that, I want to
 11 ask you some questions about it.
 12 Is this, Exhibit 5, the contract
 13 that you think authorizes WINE works?
 14 A. No. It's not what I'm referring
 15 to.
 16 Q. Okay. Can you describe to me the
 17 contract that you allege allows you and
 18 authorizes you to produce the WINE works?
 19 A. Yes. It's a two-page agreement
 20 made on March 31st of 2012 between Robert
 21 Indiana, artist, and Michael McKenzie,
 22 American Image, McKenzie or licensee, have
 23 entered into an agreement to art edition
 24 dated August 11, 2008, by which artist has
 25 granted McKenzie certain exclusive rights

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1 M. McKenzie
2 concerning two and three-dimensional works,
3 on October 4th of 2011 was amended the
4 existing agreement to make use of artwork on
5 and in connection with wine, water and
6 spirits. It was later determined that the
7 name and signature, Robert Indiana, should be
8 licensed by McKenzie to cover all alcoholic
9 and nonalcoholic beverages.

10 And it's two pages. It's dated the
11 31st of March, signed by Robert Indiana and
12 signed by myself. And I gave it to you
13 before. It's Index No. 65 --

14 MR. MARKHAM: Is it up on the
15 screen?

16 MR. SPIRO: Yes.

17 MR. MARKHAM: Do you have the Bates
18 number?

19 MR. SPIRO: The Bates number is --
20 oh, it's on the side -- AMER 2340, and
21 we'll call this Exhibit 7, and mark it
22 as 7.

23 (Exhibit 7 marked for
24 identification.)

25 Q. Can you tell me where on this

Page 215

1 M. McKenzie
2 document it -- according to you, it
3 authorizes the WINE works?

4 A. All the way through. It's cover
5 all alcoholic and --

6 MR. MARKHAM: I need to stop you.
7 I need to stop you, just for the record.

8 I don't believe this is Exhibit 7,
9 Alex, because the last exhibit I had was
10 5. You then went to a document that you
11 said had been previously marked, and
12 that was 1635. So unless I'm missing
13 Exhibit 6, the one you've just
14 identified should be Exhibit 6. If I'm
15 missing one, I'm sorry.

16 MR. SPIRO: I believe that the
17 smaller document that your client said
18 was not the WINE exhibit. This exhibit
19 is 6.

20 MR. MARKHAM: Oh. Did you mark
21 that? I'm sorry.

22 MR. SPIRO: Yeah. So this is 7.

23 Q. Mr. McKenzie, can you show me on
24 this document by referring to a paragraph
25 number or sentence where you get the

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EXHIBIT D - 55

1 M. McKenzie
2 authority to produce the WINE works that
3 Mr. Hillgrove says you're a liar about?

4 A. Well, Mr. Hillgrove is a junkie,
5 liar. We've already said that. It's right
6 in No. 1, Artist grants McKenzie the right
7 and license to use the artwork, the Robert
8 Indiana name and the Robert Indiana signature
9 collectively called property, exclusive and
10 worldwide in connection with the
11 manufacturer, marketing, distribution,
12 promotion, advertising and sale of beverages.

13 And it's re-articulated in the
14 first paragraph and it goes on with the same
15 thing.

16 And in No. 2 it says, Artist shall
17 have the right of approval for general design
18 of the property on beverages. Once approved
19 by artist the property may be used as part of
20 the label on any advertising promotional
21 materials in any color, any proportionality
22 (inaudible) --

23 Q. Mr. McKenzie, Mr. McKenzie, let's
24 do this. Rather than you read it, why don't
25 you just tell us what paragraphs you think

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1 M. McKenzie
2 give you the ability to make artwork labeled
3 WINE, not sell beverages?

4 MR. MARKHAM: He's reading.

5 MR. SPIRO: Mr. Markham, let him
6 answer the question.

7 Q. Mr. McKenzie, the question is
8 pending.

9 A. No. 1, here it indicates that we
10 can use it anyway we want.

11 Q. Yeah.

12 A. And, also, up front in the first
13 paragraph, he's referring to artworks as
14 well, and the fact that Indiana has these
15 artworks all over his house and that Thomas
16 was involved in changing the colors and that
17 he signed them. I don't know what it is you
18 are talking about really. Give me time to --

19 Q. Well, I don't know what you're
20 talking about.

21 My question is: Mr. Hillgrove says
22 under oath that you're a liar --

23 A. Yeah --

24 Q. -- and I'm asking you, and you
25 said, Let's look at the contract.

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EXHIBIT D - 56

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1 M. McKenzie
 2 A. (Inaudible.) The contract, and --
 3 Q. Mr. McKenzie, can I finish my
 4 question?
 5 A. Sure.
 6 Q. I'm looking at the contract, and I
 7 see the word HOPE, the HOPE artwork in all
 8 capitals, H-O-P-E artwork. And I'm asking
 9 you if the document that you say gives you
 10 the authority actually says anywhere that you
 11 can produce WINE, capital W-I-N-E, artwork,
 12 yes or no?
 13 A. Yes. The whole contract is meant
 14 to make WINE happen. That's what that
 15 contract is all about.
 16 Q. Can you explain to me if that's
 17 what that contract is all about, how come it
 18 never actually says WINE artwork?
 19 A. Oh, that's -- if you can get a
 20 reading from a contract. By my reading is
 21 that's what he wanted to do, and that's how
 22 he acted. So when you have any discrepancy
 23 of these things, it's how the person acted.
 24 The way he acted was that we were making WINE
 25 and trying to get anybody involved in doing

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1 M. McKenzie
 2 it anyway we can. We had seven years trying
 3 to make it happen, and it was very difficult.
 4 Q. Well, Mr. Mc --
 5 A. Go ahead.
 6 Q. You're not through? Do you want to
 7 keep going?
 8 A. No, I don't care, but go ahead.
 9 That's what the contract says. You can read
 10 it how you feel like reading it. I'm reading
 11 how I think it works, and I'm also telling
 12 you how we was acted on it. So what do you
 13 want me to tell you now?
 14 Q. Well, but somebody under oath has
 15 said that you're a liar, right, Mr. McKenzie,
 16 we've have already gone over that, right?
 17 A. Yes. A dead junkie said that, so
 18 I --
 19 Q. And somebody else --
 20 (Simultaneous crosstalk)
 21 Q. So, Mr. McKenzie, you understand,
 22 right, that when somebody even a dead -- even
 23 as you call him a dead junkie --
 24 A. Whichever one (inaudible) --
 25 Q. Mr. McKenzie, you got to wait for

1 M. McKenzie
 2 me to finish my question.
 3 A. Go ahead.
 4 Q. That when somebody, even who you
 5 refer to as a dead junkie, says that what
 6 you're claiming is true is a complete lie,
 7 under oath, that it's fair to ask you about
 8 the contract that you say governs, don't you
 9 think that's fair?
 10 A. It's the contract talking all about
 11 WINE. Did he mention that? Did the dead
 12 junkie mention that we had a deal or a
 13 contract or he didn't mention that? Well,
 14 did detox pay him -- did detox pay him --
 15 (Reporter clarification.)
 16 Q. Mr. McKenzie, I think your voice is
 17 trailing off, so that the court reporter
 18 can't take it. I want to make sure we get
 19 every single one of these words.
 20 (Reporter clarification.)
 21 A. That he's asking me to make things
 22 of WINE based on the whole production list.
 23 That's how we saw it, which is prints and
 24 sculptures, which is where we were headed
 25 with WINE. Unfortunately, it didn't go that

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1 M. McKenzie
 2 far. It was being misstamped and done. We
 3 thought it was a natural. We thought it
 4 would work. It really didn't. It ended up
 5 just being another thing I spent a lot of
 6 money on that I got nothing back.
 7 Q. That question -- that answer was
 8 completely not responsive.
 9 MR. SPIRO: Can you ask my question
 10 again, please. Can you read it back.
 11 Maybe he'll answer it straightforward,
 12 if it comes from you.
 13 (Record read.)
 14 A. Yes.
 15 Q. Okay. And in this contract, it
 16 never actually comes out and says, WINE
 17 artwork, W-I-N-E, artwork, correct?
 18 MR. MARKHAM: Objection. The
 19 document speaks for itself.
 20 A. Yeah, the document --
 21 Q. Answer my question.
 22 A. I believe that the document says
 23 what it says.
 24 Q. Not my question.
 25 My question is: Does the document

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EXHIBIT D - 57

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1 M. McKenzie
 2 say W-I-N-E artwork anywhere, yes or no?
 3 A. No. It says, Beverages and
 4 anything we want to do with it, including
 5 WINE, water and spirits.
 6 Q. Is a piece of WINE artwork a
 7 beverage?
 8 A. No. But it's the artwork that he
 9 refers to. He was really referring to the
 10 HOPE schedule, and we should do that with
 11 WINE. That's what this contract was about,
 12 but we weren't able to make it happen.
 13 Q. Let's move -- we are going to move
 14 to those other exhibits in a moment.
 15 MR. SPIRO: But let's put up
 16 AMER 1783. And I'll mark this as 8.
 17 MR. NOSANCHUK: Just a moment.
 18 (Exhibit 8 marked for
 19 identification.)
 20 Q. Mr. McKenzie, that's your email at
 21 the top, right, and MM2Uwords@AOL.com?
 22 A. Right.
 23 Q. And that's Jamie Thomas and John
 24 Frumer, correct?
 25 A. Right.

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1 M. McKenzie
 2 Q. Okay. Do you remember receiving
 3 this email on September 22, 2017?
 4 A. Yes.
 5 Q. And it's from Mr. Frumer, right?
 6 A. Yes, I believe so.
 7 Q. And Mr. Frumer is who again?
 8 A. He was the lawyer for Indiana and
 9 Jamie Thomas until Brannan came onboard.
 10 Q. And you worked closely with
 11 Mr. Indiana, as you've said, right?
 12 A. Yes.
 13 Q. And very closely with Mr. Thomas,
 14 right?
 15 A. Same as with Indiana. I worked
 16 with Mr. Thomas, because he worked with
 17 Mr. Indiana.
 18 Q. Partners on many projects, right?
 19 A. Indiana, yes. Thomas, no.
 20 Q. Collaborate on many different
 21 things, right?
 22 A. Indiana, yes. Thomas, no.
 23 Q. You got to know them pretty well,
 24 right?
 25 A. Yeah.

1 M. McKenzie
 2 Q. And they got to know you, right?
 3 A. Yeah.
 4 Q. And so did Frumer, right?
 5 A. Less so. I mean, Frumer, I think I
 6 met with him twice maybe.
 7 Q. Okay. But you're on many
 8 correspondences with him, right?
 9 A. I don't know. Maybe.
 10 Q. You spoke to him on the phone
 11 sometimes, right?
 12 A. Yes.
 13 Q. You would have spoken to Mr. Thomas
 14 and Mr. Indiana about you, no doubt, right
 15 given everyone's working together, right?
 16 A. Right.
 17 Q. And he says to you, Dear Michael,
 18 what we are doing is waiting for you to
 19 respond in a concise, accurate, consistent
 20 manner to our wholly reasonable, cogent,
 21 simple questions from the other day, right?
 22 Do you see that sentence?
 23 A. I don't know what those questions
 24 were, but we tried to explain -- Mr. Frumer
 25 was trying to send a cease and desist letter

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1 M. McKenzie
 2 and was trying to get me and my attorney to
 3 explain to him how to do that.
 4 I'm not an attorney, and I kept
 5 telling him, You need to talk to my attorney.
 6 So I don't know exactly what that's
 7 about. The rest of it is about -- I
 8 explained to him that Mr. Morris was led by
 9 Salama-Caro into a problem, and there was
 10 going to be a problem for Bob if someone
 11 didn't take care of it. Could they please
 12 provide him with somebody from the estate
 13 that would sign it. He wouldn't take my
 14 Certificate of Authenticity. He wanted
 15 someone from the estate to do it.
 16 So they had never done it before,
 17 and he was asking, Well, how do I put
 18 together a Certificate of Authenticity?
 19 You know, I don't know, he's not an
 20 art person so explaining it wasn't so easy.
 21 Q. Sending a cease and desist letter
 22 to whom?
 23 A. To Morgan, because I asked him --
 24 he had never written a cease and desist
 25 letter before, so he was asking me if I could

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EXHIBIT D - 58

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1 M. McKenzie
2 help do it, and he finally sent it to Morgan.
3 I can't remember when, but it was before this
4 started.

5 Q. To Greg Morris?

6 A. No. He sent the cease and desist
7 letter to Salama-Caro, Morgan and all the
8 other affiliates of Morgan that he could find
9 in his (inaudible), 90 percent of which
10 bounced back from the false addresses.

11 Q. Was one of the people he sent it to
12 Greg Morris?

13 A. No.

14 Q. Did you assist him in preparing the
15 cease and desist letters?

16 A. I did not.

17 Q. Did you confer with him -- did you
18 confer with him at all about the cease and
19 desist letters?

20 A. I referred him to attorneys who I
21 thought were experts in that field. I'm not
22 an attorney.

23 Q. Right. But did you help provide
24 factual information that would become part of
25 the cease and desist?

1 M. McKenzie
2 sentence, What we are doing is waiting for
3 you to respond in a concise, accurate,
4 consistent manner to our wholly reasonable,
5 cogent, simple, questions.

6 I asked you: Did anyone ever say
7 that you to? You said earlier, under oath,
8 No, right?

9 A. This is his inability to understand
10 what I'm telling him, because he's not an art
11 lawyer.

12 Q. That wasn't my question. Not my
13 question. Not my question. My question is:
14 Did somebody say it to you, not your
15 explanation.

16 I'm asking you: Has someone ever
17 said that to you; do you remember me asking
18 that you question?

19 A. He didn't say he wrote it, but I
20 don't know even know what he's referring to.
21 I don't know if he's referring to the cease
22 and desist letter or what.

23 Q. But I also asked -- I also asked
24 you if he wrote it, if anybody ever wrote
25 that to you earlier today.

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1 M. McKenzie
2 A. No. He did that with Jamie.
3 Q. Did you confirm with Jamie about
4 the contents of the cease and desist?

5 A. No. It wasn't really my battle.
6 It was theirs.

7 Q. Whether it was your battle or not,
8 sir, was not my question.

9 My question is: Did you and
10 Thomas --

11 A. No.

12 Q. -- discuss the cease and desist
13 letters?

14 A. Did not.

15 Q. Not at all, you're positive?

16 A. Positive.

17 Q. Under oath.

18 A. All I know is they were doing it.
19 I don't know what the contents of it were. I
20 actually never saw the cease and desist
21 letter, to tell you the truth. It may be in
22 all this paperwork. I don't remember if I
23 ever read it.

24 Q. Well, one of the things I asked you
25 earlier is did anyone ever say to you this

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1 M. McKenzie
2 MR. MARKHAM: Objection.
3 Objection.

4 MR. SPIRO: Noted.

5 Q. Answer my question. I asked you
6 earlier whether or not anyone had ever
7 written that to you; do you remember that
8 question?

9 A. Yes, and I don't photographically
10 remember everything anyone tells me or sends
11 me or tells me because I honestly don't care.

12 (Simultaneous crosstalk)

13 Q. The answer --

14 MR. SPIRO: We're going to do this
15 again, and I'll ask the judge for more
16 time, if I can't get a simple answer to
17 a simple question.

18 Q. I'm asking you: Did I ask you
19 under oath earlier today -- this is a yes or
20 no question.

21 Did I ask you whether anyone had
22 ever written that sentence to you, yes or no?

23 MR. MARKHAM: Objection.

24 A. Yes.

25 Q. Okay. And you said, No one ever

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1 M. McKenzie
2 had, right?
3 A. Not to my recollection.
4 Q. That's not what you said earlier
5 today. You said, No one ever had.
6 MR. MARKHAM: Objection.
7 MR. SPIRO: Your objection is noted
8 to these questions.
9 It's a frivolous objection, but,
10 Mr. Markham, it's noted.
11 MR. MARKHAM: I don't know why --
12 Q. Mr. McKenzie, answer my question.
13 MR. MARKHAM: I'm sorry -- I'm
14 sorry. I'm not --
15 Q. Answer my question.
16 MR. MARKHAM: I'm sorry --
17 Q. Answer my question.
18 MR. MARKHAM: I'm not -- I want to
19 put something on the record.
20 MR. SPIRO: Are you going to keep
21 interrupting and coaching the witness
22 here?
23 MR. MARKHAM: I'm not coaching the
24 witness.
25 MR. SPIRO: Well, no, but if you

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1 M. McKenzie
2 interrupt -- you know he's being evasive
3 on every answer. You yourself on the
4 record told him he's being evasive in
5 words -- in so many words.
6 You are now interrupting every
7 single question when the record speaks
8 for itself. He knows I asked him this
9 question earlier. He lied earlier, and
10 I'm asking him about that lie.
11 MR. MARKHAM: I'm telling you, I
12 want to put something on the record, and
13 I'm going to --
14 MR. SPIRO: So put it on -- so
15 we're interrupting the deposition in the
16 middle of a pending question, so that
17 you could put what on the record?
18 MR. MARKHAM: I object to the
19 question for the reason I stated before,
20 and I want to make it clear that just
21 because I'm not elaborating on the
22 objection because you think that it's
23 somehow coaching the witness doesn't
24 mean I don't have a right to make an
25 objection every time you ask the same

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1 M. McKenzie
2 question, so I will do that.
3 MR. SPIRO: The objection is noted.
4 The objection to all of these questions
5 is noted. It's a frivolous objection,
6 and I will keep asking the questions.
7 Q. The question is: Did I ask you
8 earlier under oath if anyone ever wrote to
9 you to, What we are doing is waiting for you
10 to respond in a concise, accurate, consistent
11 manner to our wholly reasonable, cogent,
12 simple questions from the other day.
13 Did I ask you that question?
14 A. I'm not sure. Something like that.
15 Q. Okay. And did you say no?
16 A. Yeah, because I didn't think it
17 meant anything, to tell you the truth.
18 Q. Okay. So you decide whether to
19 answer yes or no when you're under oath based
20 on whether or not you think it's important?
21 A. I don't know what you're making
22 reference to, so when you ask me these
23 questions, I don't know if you're asking if
24 it happened -- the thing you're showing me,
25 or if it happened a hundred years ago, two

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1 M. McKenzie
2 years ago, nine years ago. There's no
3 context for it.
4 Q. But then --
5 A. Did anyone ever say anything bad
6 about me, yeah, somebody did, you know, what
7 do you want me to tell you.
8 Q. And then I asked you -- I reminded
9 you you are under oath.
10 And I said, Are you sure, you're
11 under oath. Are you sure no one's ever said
12 that to you, and you said Yes; remember that?
13 A. Yes, so what.
14 Q. So that turns out to also be a lie,
15 right?
16 A. It doesn't mean anything. It's
17 like you don't have a context for it. You
18 don't put a context for it. It's a silly
19 question. It's like saying, Did anyone ever
20 do anything wrong, like, when, why. This is
21 nonsensical crap, and you know it is.
22 Q. Why was he concerned about you
23 responding in a concise manner?
24 MR. MARKHAM: Objection.
25 Speculation.

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1 M. McKenzie

2 A. Because he didn't know what he was
3 doing. He was -- John Frumer was in way over
4 his head. He didn't understand what was
5 going on. Never bought a work of art in his
6 life. And he's listening to somebody who has
7 been doing it for 50 years, telling him how
8 it worked.

9 I don't know what part he
10 understands, but trying to explain to him 50
11 years of working with Robert Indiana, and him
12 listening to it for 45 minutes, I don't know
13 that he gets everything, or how he could
14 possibly get everything, and he's looking for
15 a way to learn how to be an art lawyer in one
16 hour, in one sentence.

17 He wants one sentence to know --
18 it's like saying, How do I win the masters,
19 Tiger Woods, how do I do it? You can't tell
20 somebody.

21 And then you come back the next day
22 and say, I'm not sure what he told me to do.
23 Do I need six clubs or eight?

24 Well, you know what, you need to
25 practice for many, many years, and then

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1 M. McKenzie

2 you'll get it a lot better.

3 So Frumer had a problem. He was
4 trying to be something he's not. He's an
5 insurance guy. That's what he does. Now
6 he's trying to be an art guy, trying to run
7 Robert Indiana's estate, asking me how it
8 works. Then he asked my attorney how it --
9 my attorney called me up and said, I don't
10 think he understands anything.

11 Q. Are you done?

12 A. Yeah.

13 Q. And you have no idea why he thought
14 you couldn't answer questions concisely?

15 MR. MARKHAM: Objection.

16 A. I have no idea. I have no idea
17 what he was trying to do.

18 Q. Do you know why he was concerned
19 about your inability to answer questions
20 accurately?

21 MR. MARKHAM: Objection.

22 A. That's not what he was saying. He
23 was just confused, because he didn't know
24 what he was doing.

25 Q. So when he said to you that he

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1 M. McKenzie

2 needs you to answer and respond accurately,
3 in an accurate way, what did you take that to
4 mean?

5 A. Take -- I took it to mean he wants
6 to learn how to be an art lawyer in two
7 sentences. Yeah, he was lost. He needed
8 direction, and he was upset because he came
9 to Katonah and he talked to me for two hours,
10 but that's not going to make you an expert in
11 Robert Indiana publishing. It's pie in the
12 sky. He was looking for pie in the sky.

13 I can't give you pie in the sky. I
14 don't have the sky. I don't own the pie.
15 And that's why he's probably out, you know,
16 he's out of it.

17 Q. And then he also said that he's
18 concerned or he expressed concern about you
19 answering questions in a consistent manner,
20 right?

21 A. You'd have to talk to him about
22 this. He's the one who wrote it, not me.

23 Q. Well, he wrote it to you, right?

24 A. That's right. So you have to ask
25 him about it.

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1 M. McKenzie

2 Q. Well, what was your interpretation
3 of why he was concerned about you not being
4 able to answer anything in a consistent
5 manner?

6 MR. MARKHAM: Objection.

7 A. Because he doesn't know what he's
8 doing, and he was trying to learn, you know,
9 it's like the guy going on YouTube trying to
10 figure out how to be an auto mechanic. It's
11 like a lot more complicated than that.
12 Frumer is an insurance guy who was trying to
13 figure out how to do a cease and desist.

14 He didn't know what he was doing,
15 and he was trying to figure out how to write
16 a Certificate of Authenticity. He had no
17 idea what that was about, and he made
18 everything much more difficult than it
19 actually had been, and he -- it was just
20 because he had never done it before. He was
21 super nervous, and he was leaning on Thomas
22 and leaning on me, then leaning on my
23 attorney, then asking for other references.

24 I can't tell you, you know, why he
25 can't understand -- or I can tell you, you

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EXHIBIT D - 61

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1 M. McKenzie
 2 know, if you try to do something you don't
 3 know how to do, it's not going to work out
 4 for you in two sentences. It's not going to
 5 work out for you in three phone calls and a
 6 45-minute meeting. You need to have a lot
 7 more information about publishing, Robert
 8 Indiana, values, the market.
 9 He was trying to get me to sign off
 10 on whether or not I would agree that Morgan
 11 owed the estate \$250 million. And I was
 12 like, I can't really do that.
 13 Q. Are you done? I'm sorry, are you
 14 done?
 15 A. Well, you asked me to elaborate on
 16 it, so I did.
 17 Q. You have no evidence that Mr. Nikas
 18 told Mr. Frumer to write this email, right?
 19 A. No. No, no.
 20 Q. You have no evidence that Simon or
 21 his family told Mr. Frumer to demand you
 22 answer things accurately and concisely,
 23 right?
 24 A. It has nothing to do with that, no.
 25 Q. Okay. What about the woman from

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1 M. McKenzie
 2 Johnsonville, do you think she told him to do
 3 this?
 4 A. What woman from Johnsonville?
 5 Q. The woman that you told the lie to
 6 about the origin of the BRAT photo.
 7 MR. MARKHAM: Objection.
 8 A. Well, that's --
 9 MR. MARKHAM: Objection. There's
 10 nothing in the -- objection to the
 11 question. It misstates the prior
 12 testimony.
 13 MR. SPIRO: The same question is
 14 still pending.
 15 Q. The woman in Johnsonville that you
 16 lied to, do you have any reason to think
 17 that --
 18 A. Yeah. I didn't lie to her. She
 19 just wrote something that I don't really
 20 believe. She's a publicist, and publicists
 21 lie. That's what they do. The publicists
 22 complain about her. She lied, too.
 23 Q. She's a liar, too, now?
 24 A. Publicists -- their job is to get
 25 into the newspaper any way they can. That's

1 M. McKenzie
 2 their job.
 3 Q. Your testimony is she lied? Your
 4 testimony is she lied?
 5 A. No. I think she misunderstood what
 6 I told her. So what are you talking about
 7 now?
 8 Q. Is there any evidence that
 9 Rosenbaum, who also thinks that you're not on
 10 the quote, up and up, any evidence that he
 11 told Frumer to also question your accuracy
 12 and consistency?
 13 A. I don't think so, no.
 14 Q. Okay. What about your assistant
 15 who accused you of fraud, any evidence that
 16 your assistant told Frumer to question your
 17 accuracy and consistency?
 18 A. She wouldn't have access to anyone
 19 above the computer here. That's it. She had
 20 no access to anything we do.
 21 Q. It wasn't her either?
 22 A. She wouldn't have that kind of
 23 access.
 24 Q. And any reason to think Frumer was
 25 high or a drug addict or any of these other

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1 M. McKenzie
 2 words that you've used when he --
 3 A. No --
 4 Q. -- questioned -- excuse me, when he
 5 questioned your accuracy and you being
 6 concise in your consistency?
 7 A. No. He was requesting accuracy,
 8 and the reason why he couldn't find accuracy
 9 is because he didn't know what he was doing,
 10 he really didn't.
 11 Q. But you have no evidence -- you
 12 have no evidence that it was a drug problem,
 13 right?
 14 A. I doubt it was a drug problem.
 15 John is a pretty straight-arrow guy.
 16 MR. SPIRO: Can we put up 1331,
 17 AMER 1331, which is Tab 70.
 18 MR. NOSANCHUK: Okay.
 19 (Exhibit 9 marked for
 20 identification.)
 21 Q. Do you see this exhibit?
 22 A. Yeah.
 23 Q. Recognize it?
 24 A. Yeah.
 25 Q. Accurate email that Mr. Thomas sent

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EXHIBIT D - 62

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1 M. McKenzie
 2 you?
 3 A. Yeah.
 4 Q. And you put a little extra in the
 5 check, like he asked, right, like you told us
 6 earlier?
 7 A. Yeah.
 8 Q. And part of that was to deal with
 9 this Greg Morris asshole?
 10 A. Yes, and that's what he was.
 11 Q. That was to deal with this Greg
 12 Morris asshole, because he was questioning
 13 you being a liar, basically?
 14 A. No. He was looking for a
 15 Certificate of Authenticity from the estate,
 16 and they didn't know how to write a
 17 Certificate of Authenticity, so Frumer got in
 18 and did a whole bunch of research on how to
 19 write a Certificate of Authenticity.
 20 I told him, Why don't you just take
 21 the Certificate of Authenticity I send you,
 22 and put your name and change the logo. It
 23 shouldn't be this hard.
 24 So, you know, but Greg Morris, I
 25 don't know what he wanted. It was like, you

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1 M. McKenzie
 2 know, he had Jamie Thomas get on the phone
 3 and tell him, Yes, he says I'm the CEO of
 4 this thing. And then it was like, Well, how
 5 do I know that Jamie Thomas was on the phone.
 6 I don't -- and where do I go with
 7 this now. It just went on and on and on, and
 8 it went on and on and on because Evelyn
 9 Salama-Caro told him she was the only person
 10 authorized to authenticate Robert Indiana,
 11 which was a grievous lie.
 12 Q. And Mr. Morris was questioning your
 13 credibility, right?
 14 A. Only on the basis of Evelyn
 15 Salama-Caro, who had no right to do what she
 16 did. That was an egregious interruption of
 17 my business. I think there's a term for it.
 18 I'm sure -- she interrupted my business. It
 19 had nothing -- it wasn't her position to do
 20 it, and she made somehow people believe she
 21 was the only person in the world that could
 22 authenticate Robert Indiana. I pointed out
 23 to -- there were hundreds of people who
 24 published Robert Indiana who could
 25 authenticate their own work.

1 M. McKenzie
 2 Don Berger, which is a major
 3 publisher for 20 years, they had problems
 4 with Morgan, with Salama-Caro, with Artist
 5 Rights Society. They were ready to sue them.
 6 There were plenty of problems with Morgan,
 7 and Greg Morris was one of the problems that
 8 Morgan created. If not, Morgan, I think
 9 Evelyn Salama-Caro, whatever her name is --
 10 she probably has another name, too. She got
 11 into this and made him think that nobody
 12 could authenticate this but her, and,
 13 therefore, anything I said was a lie. But
 14 later I think he found out that she's a liar.
 15 You know, the estate ended up
 16 giving her, at some point, I assume, whatever
 17 it was he was looking for. I couldn't tell
 18 what he wanted. First, it was, Give me a
 19 Certificate of Authenticity. We did that.
 20 Then she apparently told him I couldn't write
 21 an authenticity on my own work, that showed
 22 it was Four Seasons that -- I don't know how
 23 many people saw it, but, of course, it was
 24 there. It was a big thing.
 25 And she convinced Morris that that

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1 M. McKenzie
 2 didn't mean anything. It's like whatever.
 3 And then they finally -- I guess Frumer
 4 finally put together something for Morris,
 5 told him, Look, I'm a lawyer. Have your
 6 lawyer call me, whatever you want to do.
 7 So even then Frumer was like -- I
 8 mean, Morris was even saying to Frumer, How
 9 do I know you are who you say you are. Come
 10 on, already. You talked to Thomas. How do I
 11 know you are who you say you are. I don't
 12 know how -- that's because Evelyn Salama-Caro
 13 conned him into believing she was the only
 14 authority on Robert Indiana work.
 15 Embarrassing. She's a kid that did, what, a
 16 Matchbook thing at Sotheby's, and now she's
 17 the world authority on Robert Indiana. It's
 18 crazy talk.
 19 Q. Are you done?
 20 A. Unless you want to know more.
 21 Q. I didn't want any of that. I just
 22 wanted simple, accurate, truthful answers
 23 to -- actually, I'll tell you exactly what I
 24 want. I don't want more. I want concise,
 25 accurate, consistent answers under oath.

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EXHIBIT D - 63

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1 M. McKenzie
 2 That's what I want, okay?
 3 A. Okay. But don't ask questions that
 4 are pointed in a direction that create a yes,
 5 no answer, that will create your ability to
 6 sustain the lies, which is what you're doing.
 7 Q. You never responded to this email,
 8 correct, or it would have been in your
 9 production, and you never produced it, so I
 10 can assume that you never responded, correct?
 11 A. I don't think I did, no.
 12 Q. Right. Because you understood what
 13 he was talking about, right?
 14 A. Yeah.
 15 Q. And wasn't the -- it's a yes or a
 16 no.
 17 Did you understand what he --
 18 A. Yes, uh-huh.
 19 Q. Okay.
 20 A. Yes, 100 percent. That's your
 21 answer.
 22 Q. And he had told you to put a little
 23 extra in the check before, so you knew what
 24 he meant, correct?
 25 A. The check before, what do you mean?

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1 M. McKenzie
 2 Q. I'm saying he had used that term
 3 with you. You had done that before, to put a
 4 little extra into -- like we discussed
 5 earlier under oath, that there --
 6 A. Not from -- (inaudible).
 7 THE COURT REPORTER: Can you wait
 8 for him to finish the question. I
 9 cannot get both of you at the same time.
 10 Q. Mr. McKenzie, did you understand
 11 that instruction? You have to wait for me to
 12 finish the question.
 13 The question is: As we discussed
 14 under oath this morning, this was not the
 15 first time that you put a little extra at
 16 Thomas' request into a check that went to
 17 Indiana, correct?
 18 A. No. This is the only time I
 19 remember ever doing that, and that was
 20 because he was saying that John was running
 21 up a big fee and that partly it was because
 22 of Indiana, and partly it was my problem,
 23 too, so I should chip in for the legal part
 24 of it, and I did.
 25 Q. Okay. And it's -- your testimony

1 M. McKenzie
 2 under oath was that you had advanced other
 3 costs before by putting extra in the check.
 4 Was that testimony untruthful, or
 5 is this testimony untruthful?
 6 A. This is the only one. This is what
 7 I was referring to, this very email or
 8 whatever this is, that Jamie requested a
 9 little extra in the check. And if it was
 10 500,000, maybe it was 512, so I didn't want
 11 to get into a giant pissing match over that.
 12 I felt it was -- he was right to ask for it,
 13 and I assume it went to John Frumer to pay
 14 for some of the legal bills that were coming
 15 up from Evelyn Salama-Caro poisoning
 16 Greg Morris, and apparently at the end of it
 17 Greg Morris was happy.
 18 And I think at some point I said to
 19 him, Look, I'll buy it back from you. Do you
 20 want to do that? I don't care. I'll give
 21 you the money. He said, no, I'm going to
 22 keep it.
 23 So that's another thing that was
 24 Morgan, Salama-Caro, trying to create a
 25 problem. They created the problem. It cost

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1 M. McKenzie
 2 me some money and I paid it and now it's
 3 done. So that's it.
 4 Q. Right.
 5 MR. SPIRO: Let's put up some more
 6 exhibits to talk about.
 7 MR. MARKHAM: I need to take a
 8 five-minute break.
 9 MR. SPIRO: Okay.
 10 MR. MARKHAM: Very quickly.
 11 MR. SPIRO: All right. So it's
 12 2:38. Let's just say 2:45, just to give
 13 you seven minutes to make it a little
 14 softer.
 15 MR. MARKHAM: Thank you.
 16 MR. SPIRO: You're quite welcome.
 17 (Recess.)
 18 THE VIDEOGRAPHER: The time is 2:47
 19 p.m. We are back on the record.
 20 Q. I'm showing you -- we're on
 21 Exhibit 10 now, what I'm marking as
 22 Exhibit 10.
 23 And can we go down to the Bates, if
 24 there's a Bates, MVM 4729. Go back up.
 25 (Exhibit 10 marked for

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1 M. McKenzie
 2 identification.)
 3 Q. Mr. McKenzie, do you recognize
 4 this?
 5 A. Yes.
 6 Q. And you're aware that this existed
 7 at the time?
 8 A. Yes.
 9 Q. And it says that, In this capacity
 10 he will authenticate -- "he" meaning Simon --
 11 will authenticate my works whenever
 12 necessary, right?
 13 A. Yes, I guess so. I hadn't seen
 14 this document, but I knew he was working on a
 15 Catalogue Raisonné.
 16 Q. You knew that he was -- that he had
 17 the authority to do that, correct?
 18 A. Authority to do what now?
 19 Q. Exactly what this says, the
 20 authority to work on that magazine, and
 21 authenticate works when necessary.
 22 A. It's not a magazine.
 23 Q. The catalogue, excuse me.
 24 A. Do you know what it is?
 25 Q. Can you answer my question?

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1 M. McKenzie
 2 A. It's not a magazine. I knew he was
 3 walking around saying he had the authority to
 4 do a Catalogue Raisonné. Did I know such a
 5 document existed, no. I knew he was telling
 6 everyone he was working on a Catalogue
 7 Raisonné, and that was for many, many years.
 8 Q. And Mr. Indiana never disputed that
 9 he was working on that catalogue, right?
 10 A. He did.
 11 Q. He disputed that -- the world knew,
 12 many people knew that he was working on this
 13 catalogue, right?
 14 A. Yes, but many people wondered why
 15 it was taking so long because a traditional
 16 Catalogue Raisonné takes two to three years,
 17 and he had been using this as a fulcrum,
 18 F-U-L-C-R-U-M, which is not what a -- a
 19 Catalogue Raisonné is supposed to be an
 20 intellectual document, and it didn't feel
 21 like that's where this was going. It felt
 22 like it was him trying to make his work worth
 23 more. That's not what it was supposed to be.
 24 Are you aware that Indiana told him
 25 to put all my work in there, too, are you

1 M. McKenzie
 2 aware of that?
 3 Q. Are you done?
 4 A. Yeah.
 5 Q. Okay. Do you see here with
 6 Indiana's signature how it says that Simon
 7 can authenticate the works, do you see that?
 8 A. Yes, but Indiana actually did --
 9 MR. MARKHAM: You've answered the
 10 question --
 11 (Simultaneous crosstalk.)
 12 Q. Mr. McKenzie, just to reset, I
 13 think your lawyer was instructing you again
 14 to just answer the question asked.
 15 The question asked --
 16 A. Yeah. I see what it says on the
 17 screen, yeah.
 18 Q. Right. And you agree with me that
 19 it says here that Simon can authenticate the
 20 works correct?
 21 A. Yes, but not exclusively, as he
 22 purported to do.
 23 Q. Not my question.
 24 A. Do you see the word "exclusive"?
 25 Q. Not my question.

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1 M. McKenzie
 2 A. Okay.
 3 Q. My question wasn't could he do it
 4 exclusively. You're not answering my
 5 questions, which is your lawyer keeps
 6 interrupting you, and why I keep interrupting
 7 you. Answer my question.
 8 Does it say that he can
 9 authenticate the works whenever necessary,
 10 yes or no?
 11 A. Yes.
 12 Q. Does that change your opinion when
 13 that you said that he had no right to
 14 authenticate the works to Greg Morris?
 15 A. It wasn't him. It was his
 16 daughter. There's nothing here that says his
 17 daughter can do it. His daughter is not
 18 qualified to authenticate anything. He
 19 didn't authenticate it. It was his daughter.
 20 His daughter stepped in and made a mess out
 21 of it.
 22 Do you see anything in that
 23 sentence that says, I can also pass this on
 24 to anyone I want, do you see that sentence,
 25 because I don't.

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1 M. McKenzie
 2 Q. Okay.
 3 MR. SPIRO: We're on 11. We're
 4 marking this as 11, which is AMER 1838.
 5 (Exhibit 11 marked for
 6 identification.)
 7 Q. Do you see the email that you sent
 8 on August 18th, 2017, and you sent this
 9 email, correct?
 10 A. Yes.
 11 Q. And you're again being questioned
 12 about the authenticity of paintings and other
 13 works, right?
 14 A. It's the same person.
 15 Q. Right. Questioning you, and
 16 questioning the authenticity, correct?
 17 A. You brought this up. It's the same
 18 person. It's Greg Morris.
 19 Q. And they're questioning you about
 20 the authenticity of art, correct?
 21 A. Yes, because of Evelyn Salama-Caro,
 22 who is not in that letter that you just sent
 23 me. She has no authority whatsoever.
 24 Q. And that's a yes, they're
 25 questioning the authenticity?

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1 M. McKenzie
 2 A. Do you want the answer of what
 3 explains it, or do you just --
 4 Q. I just want -- I'm asking a simple
 5 yes or no question. I'm asking for a simple
 6 yes or no answer.
 7 A. Yes.
 8 Q. Does this email question the
 9 authenticity of art, yes or no?
 10 A. Yes.
 11 Q. And we're looking now at 11, which
 12 I'm marking now as 11 --
 13 MR. NOSANCHUK: It's 12.
 14 Q. 12, excuse me, which is AMER 1836
 15 this is an email from you to Brannan, Thomas
 16 and Frumer, right, with a subject, Indiana
 17 Paintings.
 18 You sent this email, correct?
 19 A. Yes.
 20 (Exhibit 12 marked for
 21 identification.)
 22 Q. And this is right after the other
 23 email, right, or in the days that followed,
 24 right?
 25 A. I guess so. It seems to be dated

1 M. McKenzie
 2 that way, yes.
 3 Q. Recently, three separate people
 4 questioned this, two who bought paintings for
 5 which Bob had been paid, and one who
 6 last-second cancelled.
 7 You're expressing concern to the
 8 team about people challenging the
 9 authenticity of the works, correct?
 10 A. Yes. I'm telling them we need
 11 Certificates of Authenticity, as it says
 12 here, because we have people, i.e., Morgan,
 13 going into all the dealers, making up stories
 14 that we don't even know who Robert Indiana
 15 is, and the whole thing doesn't exist, blah,
 16 blah, blah. We need to counteract it.
 17 That's what this says.
 18 Q. And did anybody respond to this
 19 email?
 20 A. Yes.
 21 Q. And what was their response?
 22 A. The response was that we needed to
 23 make some kind of certificate, and I should
 24 meet with them and figure out how to do it.
 25 Q. Mr. Indiana wasn't included on this

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1 M. McKenzie
 2 email, correct?
 3 A. Mr. Thomas was getting all of
 4 Mr. Indiana's emails. He was the point man
 5 and Brannan was the second guy and Frumer was
 6 the third, so that's how they were operating.
 7 And --
 8 Q. Are you still going, because there
 9 is no question pending?
 10 A. Okay. Go ahead. Go on.
 11 Q. My question was: Is Mr. Indiana on
 12 this email? The answer is how every other
 13 witness has ever answered that question is a
 14 yes or a no, so --
 15 A. Yes.
 16 Q. Yes, he is on this email?
 17 A. Yes.
 18 Q. Okay. What's his email address
 19 that's on this email?
 20 A. It's Jamie Thomas' email. He was
 21 basically running Indiana's studio, and
 22 that's the only way you could communicate
 23 with Indiana in 2017.
 24 Q. Well, you could also speak to him
 25 in person, right?

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EXHIBIT D - 66

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1 M. McKenzie
 2 A. How?
 3 Q. You don't get to ask the questions,
 4 Mr. McKenzie. I'm asking you.
 5 Could or could you not speak to
 6 Mr. Indiana in person if you wanted to?
 7 A. Maybe. You never knew if he was
 8 going to answer, be there. Sometimes I drove
 9 up to Maine, and I was there for a week and
 10 he never came out of his house.
 11 Q. And you said that Mr. Thomas had
 12 access to his emails, correct?
 13 A. Yes.
 14 Q. And you're aware that after the
 15 litigation began, Mr. Indiana's emails -- his
 16 prior emails disappeared, right?
 17 A. I'm told that. I don't know that
 18 that's true. I have no idea.
 19 MR. RYAN: Objection as to form.
 20 This is Paul Ryan. I'm objecting to
 21 that question.
 22 Q. Anyone else have access to
 23 Mr. Indiana's emails other than Mr. Thomas
 24 that you're aware of?
 25 A. Yes. I mean, at different points

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1 M. McKenzie
 2 anyone who ran his studio, and his thing was
 3 they would answer -- they would get all the
 4 emails. They would answer some, print them
 5 out and let him know when he woke up, which
 6 was 11:00, that emails came in from blah,
 7 blah, blah. Sometimes they've answered them.
 8 Sometimes they gave it to him. Sometimes
 9 apparently they threw it in the garbage. So
 10 I don't -- that was pretty much, even before
 11 Jamie, whoever was running the studio was
 12 aware of Robert Indiana's emails. Robert was
 13 not very computer savvy, and he relied on his
 14 staff to more or less run the emails.
 15 MR. SPIRO: Put up the next
 16 exhibit.
 17 Q. While we do that, have you ever
 18 discussed with Mr. Thomas the disappearance
 19 of the emails?
 20 A. I haven't spoken to Jamie Thomas
 21 since this litigation began, no.
 22 MR. RYAN: Objection as to form.
 23 Q. Do you have any other information
 24 or evidence as to how the emails disappeared
 25 off the server?

1 M. McKenzie
 2 A. I have no idea whether they did or
 3 they didn't. No idea.
 4 Q. Now, looking at --
 5 MR. SPIRO: Where are we,
 6 Exhibit 13, JLT 10699.
 7 (Exhibit 13 marked for
 8 identification.)
 9 Q. August 23rd, same time period,
 10 right?
 11 A. Yeah. Well, which one are you
 12 asking me? There's like three or four emails
 13 up. What am I referring to here?
 14 MR. SPIRO: If you highlight the
 15 relevant section, please, so that
 16 everybody can follow.
 17 MR. NOSANCHUK: Okay. This is
 18 where the mouse is. It won't let me
 19 highlight. I'm having a problem here.
 20 Q. Two collectors -- we're on the top,
 21 here, where the mouse is.
 22 A. Okay, right.
 23 Q. Two collectors want to return
 24 important pieces that were shown at the Four
 25 Seasons, unless they get proof Bob knows

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1 M. McKenzie
 2 about the work. This could just be the way
 3 Bob signs or Simon's influence. Can't tell.
 4 But either way it's a real issue.
 5 Right? Did you write that?
 6 A. Yes, 100 percent.
 7 Q. And you say, I'll make some dummy
 8 certificates and send on, right?
 9 A. So they could see what a
 10 certificate looked like, and they'd have to
 11 make their own.
 12 Q. Okay. Thank you.
 13 How did you make the dummy
 14 certificates?
 15 A. They're blank. You know, you just
 16 send it in blank, and -- it's a blank
 17 certificate. You know, you send it -- you
 18 can download them off the internet. You send
 19 it to them, and you say, this is what a
 20 certificate looks like, but you have to fill
 21 in the blanks, you know, what the size is,
 22 date is, medium, whatever else.
 23 Q. Did the same -- to make a dummy
 24 certificate, do you use the same
 25 Photoshopping tool that you use to alter the

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1 M. McKenzie
 2 BRAT photograph?
 3 A. No. It has nothing to do with it.
 4 Q. Did you send them dummy
 5 certificates?
 6 A. Yes.
 7 Q. And did these dummy certificates
 8 end up having information filled in and being
 9 sent to the auction house?
 10 A. I think so. You know, I know that
 11 they -- there was a problem. They had to
 12 correct Sotheby's, I think it was, and
 13 Christie's, too, perhaps, and then also talk
 14 to Greg Morris. He had a whole circus of
 15 people involved. That's why it was going all
 16 over the board.
 17 Each one had a different -- they
 18 were plugging in to me, and then he was upset
 19 that I didn't plug back into him. And one
 20 would say, look, I'm the one in charge, I'm
 21 the consultant. The next one would say, I'm
 22 the lawyer.
 23 I didn't know who was in charge.
 24 Q. Didn't you testify earlier that
 25 Certificates of Authentication were a scam.

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1 M. McKenzie
 2 Isn't that the word you used?
 3 A. Many of them are. As an example,
 4 all the people on ships, the next client you
 5 have, that's a scam, that create Certificates
 6 of Authenticity that purport to make
 7 something worth a lot of money when, in fact,
 8 it's a piece of junk.
 9 So, generally, the certificates
 10 that I see are in second-rate galleries and
 11 second-rate publishers who are trying to
 12 convince you that the artist they represent
 13 who's worthless has a big value, or the piece
 14 of paper that's basically just a poster is
 15 some kind of a lithograph and they create a
 16 whole -- so I don't do that, because my stuff
 17 is what it is. I never had anybody question
 18 what I did up until this guy.
 19 Q. Are you done?
 20 A. Yeah.
 21 MR. SPIRO: AMER 1834, Exhibit 14,
 22 marking.
 23 (Exhibit 14 marked for
 24 identification.)
 25 Q. Can be signed by --

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EXHIBIT D - 67

1 M. McKenzie
 2 MR. MARKHAM: Where are we?
 3 Q. Did you send this email?
 4 A. Yeah.
 5 Q. And you sort of say -- you're
 6 referring to the dummy certificates you've
 7 sent. You say, can be signed by John's
 8 attorney, Jamie as president, whatever,
 9 right?
 10 MR. MARKHAM: Objection.
 11 Objection.
 12 A. Yeah. I was trying to appease
 13 somebody who had been given a line of lies
 14 from Evelyn Salama-Caro, and I wasn't --
 15 rather than suing her and going into a mess
 16 with it, I was trying to appease the guy and
 17 just understand what do he wanted from me to
 18 get an authentication.
 19 And he said, I need someone from
 20 the estate.
 21 So Jamie was the likely guy. He
 22 was the CEO and the POA. He wasn't
 23 (inaudible). A normal certificate comes from
 24 the publisher. For some reason that wasn't
 25 good enough for him, and the reason is Evelyn

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1 M. McKenzie
 2 Salama-Caro who has no right to (inaudible).
 3 Q. Kind of like what you did with the
 4 altered BRAT photograph.
 5 It's just kind of, you know,
 6 figuring it out, right?
 7 MR. MARKHAM: Objection.
 8 A. It has nothing to do with that.
 9 You're comparing one thing that has no
 10 relationship at all to the other, trying to
 11 make a point that's going nowhere, and you
 12 know it.
 13 Q. Anything else?
 14 A. Whatever. Would you like me to get
 15 100 people who think (inaudible) is a liar,
 16 would that help you out?
 17 MR. SPIRO: Moving on to the next
 18 exhibit.
 19 (Exhibit 15 marked for
 20 identification.)
 21 MR. SPIRO: This is MAF 1176,
 22 Exhibit 15, marking. And hopefully this
 23 one will allow highlighting because it's
 24 a little smaller;
 25 MR. NOSANCHUK: All right. No,

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1 M. McKenzie
 2 unfortunately, it does not.
 3 Q. Are you aware of this letter?
 4 A. No. I've never seen it before. I
 5 don't really know who Ms. Freelander is, or
 6 Messrs Francine, Lloyd and McCauley. I don't
 7 know who they are. I see it's going to their
 8 people at the auction house. It's not a
 9 letter I had any privy to or had anything to
 10 do with, so far as I know.
 11 Q. Were you aware it was being
 12 written?
 13 A. Pardon? Did you ask a question?
 14 Q. Yes. I said, were you aware it was
 15 being written?
 16 A. No, I wasn't aware it was being
 17 written. I'm seeing it for the first time.
 18 Q. Did you want them to be sent, these
 19 kinds of letters?
 20 A. Pardon me?
 21 Q. Did you want these letters to be
 22 sent? Did you want letters disclaiming the
 23 relationship between Morgan and Simon and
 24 Indiana sent?
 25 A. As I told you, Frumer was the one

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1 M. McKenzie
 2 who came up with this, and he wanted me to go
 3 on board saying that they owed \$250 million.
 4 I told him I just couldn't do that. I have
 5 no idea -- I didn't have privy to his
 6 contracts. I didn't have privy to his bank
 7 account. I didn't have privy to Morgan
 8 sales. I could not possibly go on board and
 9 say he owed -- he was owed \$250 million, and
 10 he then went off on his own to try to stop
 11 everything.
 12 Q. Not my question.
 13 A. Okay. What's the question again?
 14 Q. We'll have -- since you can't
 15 answer a single question in a straightforward
 16 way, we'll see if you can do it for the
 17 reporter. I'll have the reporter read it
 18 back.
 19 A. Oh, no. The answer is, no, I
 20 didn't care if he did this or not. It really
 21 doesn't affect me. That's between him and
 22 Indiana, not me.
 23 Q. So --
 24 A. I don't make --
 25 Q. Are you done?

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EXHIBIT D - 68

1 M. McKenzie
 2 A. No, I had nothing to do with it.
 3 Q. Nothing to do with it.
 4 You didn't encourage it, right,
 5 according to you?
 6 A. Yeah, that was his idea.
 7 Q. I didn't ask whose idea it was. I
 8 asked: Did you encourage it?
 9 A. I may have. I know Howard was
 10 encouraging it. He was giving them the heads
 11 of all these people and such. I didn't
 12 really know a lot of the people there, so
 13 that was really between Howard and them. And
 14 did I -- based on what they were saying, did
 15 I think that Morgan was crooks, I did.
 16 Q. Now, you saw that as you were
 17 talking, AMER 1384 came up, which I'm marking
 18 as --
 19 MR. SPIRO: What are we, 16?
 20 (Exhibit 16 marked for
 21 identification.)
 22 Q. And as you were talking, you saw
 23 that this came up. And what this says is
 24 it's an email from Howard Rosenbaum, who you
 25 began saying may have had something to do

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1 M. McKenzie
 2 with this?
 3 A. Yes.
 4 MR. MARKHAM: Is this AIA 1384
 5 because the way it overlaps with the
 6 screen I can only see 138.
 7 MR. NOSANCHUK: Yes.
 8 Q. Michael McKenzie has asked that I
 9 provide you with a list of the department
 10 heads.
 11 Did you ask him to do that?
 12 A. John asked me if I knew the
 13 department heads of any of these companies,
 14 and I said I do not. I don't deal with them.
 15 Howard does.
 16 Howard apparently was having
 17 problems when he -- and he had a good
 18 relationship with all of these people from
 19 selling other works, and they were telling
 20 him that there was a problem that Simon and
 21 Mark had created problems, or addressed
 22 problems with HOPE, and blah, blah, blah,
 23 blah, blah, and that we had no affiliation
 24 with Robert Indiana. So he asked me, John
 25 did, if I knew anybody that was at these

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1 M. McKenzie

2 auction houses.

3 I said, No, I don't but Howard
4 does. So then I wrote to Howard and I said,
5 Look, John wants to get into the auction
6 houses and straighten things out because he's
7 getting flack, or we're getting flack, and
8 Howard was getting flack we wanted to put
9 something in auction.

10 The auction houses were saying,
11 Well, Evelyn Salama-Caro says this isn't
12 real.

13 So that was a big, big problem, and
14 that's, I think, what John was taking past
15 our problem into his problem, which is he
16 wanted to get, as you know, he wanted to
17 deliver a cease and desist to Morgan. That's
18 what he wanted to do.

19 Q. This --

20 A. And that's what he did.

21 Q. Are you done?

22 A. Yeah, go ahead.

23 Q. This email says that, Michael
24 McKenzie has asked Rosenbaum to do this.

25 Did you ask Rosenbaum to do this?

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1 M. McKenzie

2 A. Yes, because John asked me. As I
3 said, he asked me if I knew anyone at any of
4 these auction houses.

5 I said, No.

6 He said, Do you know anyone who
7 does?

8 I said, Yes, Howard Rosenbaum knows
9 these people. He knows all the people at the
10 auction houses.

11 And John said to me, Could you ask
12 Howard to contact me with the names of
13 important people at the various auction
14 houses, so I can get my cease and desist
15 letters out?

16 And I said, Yes, I will.

17 MR. SPIRO: No. 17, AMER 1594.

18 (Exhibit 17 marked for
19 identification.)

20 Q. You end this by saying, How are we
21 doing with letters to the key people? Is
22 there any way I can help, or Ray Dowd and
23 staff can help? Best, Michael.

24 You said that, right?

25 A. Yes, 100 percent.

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EXHIBIT D - 69

1 M. McKenzie

2 Q. You said that to Frumer, right?

3 A. Yeah. They asked me to help, and I
4 said, look, if there's any way I can help, I
5 will. If you're telling me that you think
6 you've been \$250 million short, even if
7 you're way off, it's a lot of money. So, you
8 know, if you need to get that money back and
9 you don't know how to do it, you don't know
10 how to write a cease and desist letter, I can
11 direct you to people that can help you,
12 because that's what anyone would do.

13 Bob was my friend. He was upset.
14 You know, he was telling Jamie not to let
15 anyone from Morgan ever on the island again.
16 I heard him say that more than once. So I
17 knew he was especially upset. I knew Jamie
18 was upset. I knew Frumer was upset. So I
19 was going to help them. I'm not going to
20 help Morgan, if that's what you want me to
21 do.

22 Q. So you were offering to help,
23 correct?

24 A. A hundred percent, and I'd do it
25 again.

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1 M. McKenzie

2 Q. And is there a reason why earlier
3 when I was asking you these questions, you
4 said that you weren't encouraging in helping?

5 A. I didn't encourage it. They asked
6 me. There's a real difference between me
7 encouraging and them corralling me and
8 saying, look if you want us to write a
9 certificate on this, will you help us do
10 that?

11 That's how it worked. I didn't --
12 I wasn't the one who came up with, oh, they
13 were owed \$250 million, because I had no idea
14 what was going on. I wasn't the one --

15 Q. Are you done?

16 A. I guess so. Go ahead.

17 Q. You understand that the oath that
18 you took at the beginning of this deposition
19 is the same oath that you would take in
20 court, and has the same meaning as if you
21 were in front of a judge?

22 A. Right.

23 Q. You understand that that oath means
24 that you are to be truthful and forthright
25 and not evasive in your answers, do you

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1 M. McKenzie
 2 understand that --
 3 A. Yeah.
 4 Q. -- that's part of the oath?
 5 A. Right.
 6 Q. And do you think that following up
 7 with questions is encouraging, or not?
 8 A. I don't know what that -- what
 9 you're asking me.
 10 Q. Well, let's look at No. 18 here.
 11 What's the Bates, AMER 1496?
 12 (Exhibit 18 marked for
 13 identification.)
 14 Q. And this is you following up again
 15 on March 9, 2018, right, to Jamie Thomas and
 16 Frumer.
 17 And you're saying, How's it going
 18 with the letters, right?
 19 A. I don't know what this is referring
 20 to. I thought that that was the letter to
 21 our friend, Mr. -- whatever his name is.
 22 That's probably what it was. I was not
 23 wrapped up in their duel with Morgan. That
 24 was their duel, that they asked me a
 25 question. I answered it. But I wasn't the

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1 M. McKenzie
 2 one towering the duel with Morgan. I wasn't
 3 standing in the flame of it.
 4 I told them a hundred times, This
 5 is between Bob and Morgan. It's not my
 6 battle. It's yours. I mean, if you ask me a
 7 question, I will answer it. If you need a
 8 referral, I'll give it to you. But don't ask
 9 me to come on board and deal with this thing
 10 because it's not my battle.
 11 I told Indiana that 1000 times,
 12 too. He wanted me to sue Morgan.
 13 I said, I can't do that. I'm not
 14 the one who is (inaudible), you are. You got
 15 to do something about it. I told Frumer the
 16 same thing.
 17 Would I help him, yes. But is it
 18 my battle, no. Did I start the battle, no.
 19 Did I bring the battle up, no. Am I
 20 encouraging the battle, no. What am I
 21 supposed to do, not answer the fellow? And I
 22 go up and I've got three of them cornering
 23 me, and asking me questions about how do we
 24 do this, that, or the other thing. You know,
 25 I've worked with Indiana for 40 years, you

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EXHIBIT D - 70

1 M. McKenzie
 2 know, I will try to answer whatever he needs
 3 to help him. It seems like he needs a lot of
 4 help, and it seems that way now, too.
 5 Q. Are you done now?
 6 A. Yeah.
 7 MR. SPIRO: What's next?
 8 Q. And this is you -- I think earlier
 9 we're now on 18?
 10 MR. NOSANCHUK: 19.
 11 MR. SPIRO: 19. And the stamp is
 12 -- could you just go back down -- JLT
 13 164.
 14 Q. And as you just were testifying
 15 that you were staying out of it and not
 16 encouraging it, let's take a look at this
 17 email.
 18 (Exhibit 19 marked for
 19 identification.)
 20 A. I didn't say I was staying out of
 21 it. I'm saying I was answering anything that
 22 they threw at me. And if they needed help
 23 and I felt it was something I could help, I
 24 did that.
 25 Q. What about bringing it up, were you

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1 M. McKenzie
 2 doing that?
 3 A. I was answering what they asked me.
 4 They were the ones bringing it up. I
 5 responded to it numerous times.
 6 Q. Well, did you ever bring it up, did
 7 you ever follow-up?
 8 A. Follow what up?
 9 Q. Follow-up on the letters and seeing
 10 what they were doing and seeing if could you
 11 help, or was it all just them pressuring you,
 12 and sometimes you would say yes, or did you
 13 sometimes follow-up?
 14 MR. MARKHAM: Objection. Complex
 15 question. Three questions in one.
 16 Q. Did you follow-up, Mr. McKenzie?
 17 MR. SPIRO: I'll rephrase the
 18 question.
 19 Q. Would you follow-up with them?
 20 A. I don't know what you mean by
 21 "follow-up." I didn't read or write any of
 22 the letters to Morgan. Those were written by
 23 whoever, Frumer, possibly Brannan, Jamie. I
 24 don't know, you know, I'm seeing a lot of
 25 these things for the first time.

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EXHIBIT D - 71

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1 M. McKenzie
 2 Q. All right.
 3 A. I didn't didn't see the cease and
 4 desist until this case came up. They told me
 5 they filed it, but I never saw it
 6 (inaudible).
 7 (Reporter clarification.)
 8 Q. Mr. McKenzie, you're just going on
 9 and on and not answering questions and it's
 10 hard for the court reporter to keep track.
 11 A. Well, what's the question.
 12 Q. Earlier you stated that you were
 13 not encouraging it, and you were simply in
 14 substance responding to their inquiries, and
 15 you said, What choice did you have if you're
 16 going to be with them, and they're going to
 17 follow up with you, do you remember giving
 18 that testimony?
 19 A. Yes.
 20 Q. Now, I'm asking you, again: Did
 21 you ever follow-up with them to check in with
 22 them to see how it was going?
 23 A. Only if they checked in with me.
 24 It wasn't really my battle, like I said, no.
 25 Q. Was there any instance in which you

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1 M. McKenzie
 2 would check in with them to sort of see if
 3 there were any updates?
 4 A. I don't really remember those
 5 conversations. I was there talking about the
 6 article. I was doing -- I tried to stay out
 7 of their problems.
 8 Q. Okay. Well, we are now on 19, and
 9 it's marked. This is an email from March 21,
 10 2018 from you to Jamie Thomas and John
 11 Frumer.
 12 Do you recognize this email?
 13 A. Yeah.
 14 Q. And did you send this email?
 15 A. Yes.
 16 Q. And is this in response to an email
 17 that you got, or is this you checking in and
 18 seeing if there are any updates?
 19 A. This was them telling me that they
 20 had stopped RobertIndiana.com. They said
 21 they sent a letter. Frumer was telling me he
 22 was stopping everything.
 23 I'm stopping this. I'm stopping
 24 production. I'm stopping sales. I'm
 25 stopping RobertIndiana.com. I'm stopping

1 M. McKenzie
 2 Shearbrook Corporation.
 3 I never saw any of those letters.
 4 I don't know how he was stopping it or what
 5 he did to stop it. I have no idea.
 6 But what happened was Howard
 7 Rosenbaum called me and said, You know what,
 8 they didn't stop RobertIndiana.com. It's
 9 still up and running.
 10 I'm not checking in on it
 11 day-to-day. It's not my problem.
 12 And I just wanted to know, did you
 13 really stop Robert Indiana.com, yes or no.
 14 Q. I hate to just keep asking the same
 15 question because it seems so obvious, but is
 16 this you responding to them, or it's you
 17 checking in for an up date?
 18 MR. MARKHAM: Update on what?
 19 Vague.
 20 MR. SPIRO: Mr. Markham, objection,
 21 and nothing more.
 22 Q. Mr. McKenzie --
 23 MR. SPIRO: Your objection is
 24 noted.
 25 Q. -- answer the question.

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1 M. McKenzie
 2 A. I'm not sure if it's responding to
 3 or checking in. I don't know what the
 4 difference between those two was.
 5 Q. Well, was there an email that
 6 preceded this email, that this is a reply to,
 7 or did you start this email chain? Let's try
 8 that.
 9 A. I don't remember. It's a long time
 10 ago.
 11 Q. Do you see any email that you're
 12 replying to you here, or does it look like
 13 you are the person creating the subject and
 14 starting the email chain?
 15 A. I don't know. Really, that's
 16 impossible to answer.
 17 Q. Do you think that that's an
 18 impossible question to answer?
 19 A. Yeah. I don't really follow my
 20 emails. It's very likely an email follow-up
 21 to numerous phone calls is my recollection.
 22 Q. And do you have any understanding
 23 of why Frumer thought he had the authority to
 24 stop the website?
 25 A. I wouldn't have any idea about

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1 M. McKenzie
 2 that. That was his battle (inaudible.).
 3 Q. Any idea why Frumer thought that he
 4 could stop production?
 5 A. No idea.
 6 Q. Any idea why Frumer thought he
 7 could stop sales?
 8 A. I don't have any idea.
 9 Q. Did you talk to these things --
 10 about these things with Frumer?
 11 A. No. He asked for references to
 12 attorneys who might know about this, and I
 13 gave him references. I told him I didn't
 14 have access to Indiana's contracts. I really
 15 didn't know exactly what was going on. I
 16 didn't particularly trust Morgan, since they
 17 don't show up. I don't particularly trust
 18 Simon, since he doesn't seem very
 19 trustworthy.
 20 But other than that it's his
 21 battle. You've got to take care of it. Don't
 22 wrap me up in it.
 23 Q. Did you ever talk to Mr. Thomas
 24 about it?
 25 A. Yeah. Mr. Thomas was with

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1 M. McKenzie
 2 Mr. Indiana constantly feeding me with how
 3 angry they were, and how they were ripped
 4 off, what was going to happen, and how they
 5 were going to do it. And, you know, that
 6 was -- every time I went to Vinalhaven, that
 7 was the topic that came up. It was never
 8 brought up by me. It was just sort of thrown
 9 at me because they were angry, and thought
 10 they were owed a lot of money. From what
 11 they described, it seemed like they were
 12 partially right, and other parts of it seemed
 13 not so right. But, again, I didn't have
 14 access to all the information, so I really
 15 couldn't advise them of anything. If they
 16 were hiding a lots of parts of it, so it made
 17 it impossible to have an intelligent
 18 discussion about it.
 19 Q. What did Mr. Thomas specifically
 20 say about the authority to do the things that
 21 I asked you about regarding Mr. Frumer, to
 22 stop the catalogue, to stop the works and to
 23 stop the sales, what did Mr. Thomas say?
 24 A. He would usually say, John knows
 25 what's is doing.

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EXHIBIT D - 72

1 M. McKenzie
 2 Q. Good. Any other specific
 3 statements Thomas made about the interfering
 4 with Morgan Art at the time that you recall?
 5 MR. MARKHAM: Objection.
 6 A. No. He said, John knows what he's
 7 doing, and whatever. They're going to get
 8 him.
 9 Q. Any --
 10 A. Stuff like that.
 11 Q. Any other specific statements that
 12 he said at the time that you recall?
 13 A. No.
 14 Q. What about Indiana, same subject,
 15 did Mr. Indiana, as you recall, make any
 16 other specific statements about Morgan in
 17 regard to whether or not you all could
 18 interfere with Morgan's rights on these
 19 issues?
 20 A. My all, what's my all, what's you
 21 all? Are we in the south now?
 22 Q. Mr. Thomas -- I'll rephrase the
 23 question.
 24 Are there any statements that you
 25 specifically recall that Mr. Indiana made

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1 M. McKenzie
 2 regarding whether Mr. Frumer could send
 3 letters interfering with the sales catalogue,
 4 et cetera, of the relationship between Morgan
 5 and Indiana, are there any specific
 6 conversations you recall?
 7 A. I believe that Frumer was talking
 8 to Indiana all the time, and --
 9 Q. Not my question. Not my question.
 10 I'm asking: Do you, Mr. McKenzie,
 11 recall any specific statements that
 12 Mr. Indiana made, yes or no?
 13 A. Only that Morgan was stealing from
 14 him. I didn't get any more specific than
 15 that, that they knew that. That was about
 16 it.
 17 Q. And what did Indiana specifically
 18 say about Morgan owing money?
 19 A. That they hadn't paid them for
 20 seven years, and Simon is a thief.
 21 Q. You write --
 22 A. He said, Simon is an arch thief,
 23 whatever that means. That Simon is an arch
 24 thief. That's what he told me, whatever that
 25 means.

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EXHIBIT D - 73

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1 M. McKenzie
 2 Q. And in this email you write, What
 3 do you think about doing LOVE and holding it?
 4 Do you see that sentence?
 5 A. Yes.
 6 Q. And what does that mean?
 7 A. That means that LOVE is public
 8 domain, and Bob should take hold of LOVE, do
 9 it himself and stop jacking around with some
 10 guy who doesn't know what he's doing, who's
 11 ripping him off left, right and center and
 12 the way to do that is to produce the LOVE
 13 himself, sign it himself, make the money
 14 himself and tell these people to go away,
 15 that LOVE is a public domain. You can't stop
 16 me from using it. I'm the author, and I lost
 17 it, but, I'm entitled to do it. And they
 18 were somehow convincing him he couldn't -- he
 19 couldn't even sign the word LOVE in a book if
 20 he was signing it to his best friend. That's
 21 how afraid he was of all this.
 22 And I was trying to explain to him
 23 that LOVE is a public domain. You make a
 24 LOVE drawing and hold it up and take a
 25 picture of it. He's like what are you doing?

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1 M. McKenzie
 2 Go ahead.
 3 Q. When you said "hold it," you meant
 4 hold it up, that's what "hold it" means?
 5 A. Yes. Hold it up, take a picture
 6 and --
 7 Q. The answer is yes. You don't need
 8 to explain.
 9 A. Okay, yes.
 10 Q. Mr. Frumer, as we saw in earlier
 11 emails, had concerns about interfering with
 12 the contractual rights of Morgan and Indiana,
 13 correct?
 14 A. I don't know you would have to ask
 15 him that, I'm not a lawyer, you are asking me
 16 to say what John Frumer thought, I don't know
 17 what he thought, I have no idea.
 18 Q. Did you advise Indiana to do
 19 exactly what you wrote in this email?
 20 A. Do what now?
 21 Q. Did you advise him, Indiana, did
 22 you advise him to do LOVE and to hold it up?
 23 A. Yes, I did.
 24 Q. What is your basis for saying LOVE
 25 is in the public domain? You just said you

1 M. McKenzie
 2 are not a lawyer, but what is your basis for
 3 saying that?
 4 A. Because you can research it any way
 5 you want. You can go to an expensive lawyer,
 6 like Stacey Grossman. You can go to
 7 Pattishall, and they're very expensive, or
 8 you can just go online and hit, Who owns
 9 LOVE, and it comes up. It's public domain.
 10 Q. And even if it were in the public
 11 domain, is it your --
 12 A. What's that?
 13 Q. Even if you were right and it were
 14 in the public domain --
 15 A. Yeah.
 16 Q. -- does that prevent Morgan from
 17 exclusively producing and selling it under
 18 the contract?
 19 A. A hundred percent. They're putting
 20 a copyright on it that they don't own,
 21 that they know they don't own it. It's a
 22 fraudulent act. And when you make a
 23 fraudulent act over and over again, then try
 24 to bully an artist into thinking he can't do
 25 something in public domain, I have a problem

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1 M. McKenzie
 2 with that because my company is pro artist.
 3 Q. So, Mr. McKenzie, you could
 4 yourself produce LOVE works tomorrow, if you
 5 wanted to, correct, according to that?
 6 A. I already -- yes. As many as I
 7 want to make. And I know 100 other people
 8 that are making money off of LOVE T shirts
 9 and other things. You can go online and find
 10 100 of them, too.
 11 Q. You've done it before, right,
 12 produced Love and made money off of LOVE
 13 works, correct?
 14 A. I did it with Indiana, that he
 15 signed in 1994, '05 and '06. And, yes, we
 16 all made money from it, including Indiana.
 17 Q. As this litigation progresses, if
 18 you settle the estate or whatever happens
 19 going forward, you have intention to continue
 20 to produce LOVE works, correct?
 21 MR. MARKHAM: Objection.
 22 A. Yes.
 23 MR. SPIRO: Michael, are you back
 24 live on the --
 25 MR. NOSANCHUK: No.

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EXHIBIT D - 74

Page 292

1 M. McKenzie
 2 MR. SPIRO: I'm going to need five
 3 minutes to reboot real quick as far as
 4 anything active or live, because we've
 5 lost our internet on the exhibits.
 6 Q. Did you ever use voice texting to
 7 dictate emails?
 8 A. I don't think so. I think I tried
 9 it, and it made so kind of many grammatical
 10 errors it put me off. I had had Dragon
 11 Speak, which was the first, and remains a
 12 speak-through program for computers, but it
 13 is highly inaccurate, and I'm concerned that
 14 I'm going to have something in print that I
 15 didn't say, so I don't use it. I don't use
 16 voice -- whatever that is. I type it myself.
 17 Q. And one of the other things that
 18 you wanted to accomplish was to get the
 19 website RobertIndiana.com taken down,
 20 correct?
 21 A. Not me. That was, again, Frumer.
 22 The website, they were using it in a way
 23 that's contrapositive to how a website goes.
 24 They discluded all the work that I did with
 25 Indiana, despite the fact that Indiana told

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1 M. McKenzie
 2 them to include it on the website, and in the
 3 Catalogue Raisonné. And Indiana did that in
 4 writing, but they never followed up on it.
 5 And the reason why they never followed up on
 6 it was because by not putting it on the
 7 website and the Catalogue Raisonné, they were
 8 trying to do what you're doing right now,
 9 which is trying to make it seem like I was
 10 forging things, which is a joke.
 11 Q. I'm asking you what you wanted.
 12 Did you want the website taken down
 13 because of all the things you've already
 14 stated?
 15 A. It's not my business. It's
 16 really -- that's between Robert Indiana and
 17 Jamie Thomas and John Frumer. It isn't my
 18 battle. Again, it's their problem.
 19 MR. NOSANCHUK: I'm ready to keep
 20 going with another exhibit whenever you
 21 are, Alex.
 22 MR. SPIRO: Okay. Let's do Tab 63.
 23 AMER 1718, Exhibit 20.
 24 (Exhibit 20 marked for
 25 identification.)

1 M. McKenzie
 2 Q. Did you send this email?
 3 A. I sure did.
 4 Q. Can't Indiana just retract his
 5 permissions to Simon, Simon got LOVE, right,
 6 how was Simon claiming copyright on
 7 everything else?
 8 Did you say that?
 9 A. Yeah.
 10 Q. You knew Indiana had given the
 11 permission to Simon to make LOVE, right?
 12 A. It's a joke. It's in public
 13 domain. He can't give the permission.
 14 Q. Is it your testimony under oath
 15 that when you wrote that sentence that you
 16 were joking?
 17 A. My testimony under oath is that
 18 LOVE is in public domain, and the letter that
 19 you have from Robert Indiana does not
 20 indicate that he owns LOVE or anything else.
 21 It only indicates that they can have anything
 22 he owns, and Morgan did not. And it's a bad
 23 joke --
 24 THE COURT REPORTER: I'm sorry. I
 25 didn't hear the end of your answer.

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1 M. McKenzie
 2 Q. It was not responsive anyway, but
 3 we can hear it again, Mr. McKenzie, can you
 4 repeat it?
 5 A. LOVE was a public domain. That's
 6 the answer.
 7 Q. Not my question.
 8 A. Sorry.
 9 Q. My question is: What did you mean
 10 when you said, Can't Indiana just retract his
 11 permissions to Simon?
 12 A. I meant that everyone in the world,
 13 including me, seemed to think that Simon,
 14 Morgan and their whole organization is a
 15 thieving, lying, swindling organization that
 16 runs offshore in an LLC in a P.O. Box. The
 17 P.O. Box is also shared with 42 other false
 18 companies.
 19 So, from what Bob would tell me,
 20 what everybody else would tell me, what
 21 everybody I knew in the world tell me, it
 22 seemed like we should start getting separated
 23 from these characters.
 24 Q. Did you advise Frumer that he could
 25 produce -- that they could produce LOVE works

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1 M. McKenzie
2 without Morgan?
3 A. No. I don't remember doing that.
4 Frumer never --
5 Q. Again, these are almost exclusively
6 yes or no questions.
7 A. No. No.
8 Q. Did you advise Mr. Thomas that he
9 could produce LOVE works without Morgan, yes
10 or no?
11 A. Thomas was not about producing
12 anything, so no.
13 Q. Did you tell Mr. Thomas that
14 Indiana could produce LOVE works without
15 Morgan?
16 A. I don't remember that either.
17 Q. When did Indiana tell you to put
18 your works on the website in the catalogue?
19 MR. MARKHAM: Objection.
20 A. It's in a written letter to
21 Mark Salama-Caro, and it's one of the
22 exhibits. You might want to look it up.
23 Q. Are you saying you produced that in
24 discovery?
25 A. Yes. It has a Bates number

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1 M. McKenzie
2 somewhere, too. We were telling them for
3 years that, you know, we were being excluded
4 from that catalogue, and that the last 10
5 years of his life was going to be nonexistent
6 if he didn't do something about it, and it
7 was going to hurt his overall legacy because
8 no artist has the last 15 years of his life
9 with a blank, which was what was about to
10 happen. The Catalogue Raisonné is something,
11 to give you a little education --
12 Q. I don't -- sir, sir, sir, there's
13 no questioning pending. This isn't just a
14 soapbox where you get to say everything you
15 want about every person and every art
16 concept.
17 A. Okay.
18 Q. It's question, answer, question
19 answer. Remember what Mr. Frumer said about
20 being more concise and accurate, right,
21 that's what we're trying to do here.
22 MR. MARKHAM: Objection.
23 MR. SPIRO: Is there another
24 exhibit, please. We're on 21.
25 MR. NOSANCHUK: Alex, I'm going to

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EXHIBIT D - 75

1 M. McKenzie
2 need to take a -- I need to restart my
3 machine, unfortunately.
4 MR. SPIRO: Okay. So let's take a
5 five-minute break. It's 3:34. We'll
6 come back at 3:40.
7 THE VIDEOGRAPHER: It's 3:34. We
8 are off the record.
9 (Recess.)
10 THE VIDEOGRAPHER: The time is 4:01
11 p.m. We are back on the record.
12 Q. You would agree with me that the
13 greatest source of revenue for Mr. Indiana's
14 estate is LOVE, correct?
15 A. Apparently not. He apparently
16 lived off of HOPE for the last seven years of
17 his life.
18 Q. Well, I'm not asking what he lived
19 about for the last seven years of his life.
20 I'm saying to you, in the right hands LOVE is
21 the work that could give the most value to
22 the estate, would you agree with that?
23 MR. VAZQUEZ: Objection.
24 A. Well, according to their
25 accounting, he lost \$1.8 million the last

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1 M. McKenzie
2 time they did an accounting, so I'm not sure
3 how that's benefitting the estate. If they
4 are going to lose \$1.8 million a year, that
5 adds up but in a negative way. So unless
6 that accounting is just a complete fraud,
7 then it's not a good thing.
8 Q. I'm asking your opinion as to the
9 value of the LOVE for the estate moving
10 forward.
11 Can you give me your opinion?
12 A. Yeah. I'm not really an opinion
13 person. I'm not sure what that is.
14 MR. SPIRO: Can we put --
15 A. The last accounting you guys gave,
16 he lost \$1.8 million. So you tell me what it
17 means. I don't know.
18 MR. SPIRO: Now that we're back up,
19 let's go through some of the exhibits
20 that we have left. Tab 80. And I think
21 we're on exhibit -- are we on 21?
22 MR. MARKHAM: We're on 22.
23 MR. SPIRO: Thank you.
24 MR. NOSANCHUK: I think we marked
25 an exhibit twice. Exhibit 2 was also

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1 M. McKenzie

2 marked as Exhibit 20.

3 MR. SPIRO: So be it. We can still
4 go to 22.

5 MR. NOSANCHUK: Okay.
6 (Exhibit 22 marked for
7 identification.)

8 Q. Were you aware on -- this is -- we
9 can look at the Bates stamp as always, start
10 JLT 10665, you were aware that there were
11 board meetings that occurred for the Star of
12 HOPE Foundation?

13 A. I heard about it. It's the first
14 time I've seen this document.

15 Q. Did you ever discuss with anybody
16 the idea that selling the rights to LOVE
17 after Robert Indiana's death would be
18 valuable?

19 A. Possibly. I mean, again, not
20 really my interest, and not really my -- what
21 I do.

22 Q. But you don't deny that you could
23 have had that conversation, correct?

24 A. Possible.

25 Q. And on the second page of this

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1 M. McKenzie

2 document it says, when the board of HOPE --
3 when the board is describing their strategy,
4 they say, We may want to be defendant because
5 we will be selling the rights to LOVE.

6 MR. RYAN: Objection to the form.

7 A. Where are you?

8 MR. SPIRO: Highlight this, please.

9 MR. RYAN: I made a form objection.
10 I'm not sure if it reached the record
11 because --

12 THE COURT REPORTER: I got it.

13 MR. SPIRO: Your objection is
14 noted.

15 A. I see it. We may want to be the
16 defendant because we will be selling the LOVE
17 rights. I'm not sure that I know what that
18 means.

19 Q. Did you ever discuss that?

20 A. I don't even know what it means.

21 Q. The litigation strategy after
22 Indiana's death.

23 A. I had nothing to do with that.

24 MR. SPIRO: Tab 92, please.

25 (Exhibit 23 marked for

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EXHIBIT D - 76

1 M. McKenzie

2 identification.)

3 Q. Exhibit 23. This is an email from
4 April 5, 2018, your email.

5 MR. SPIRO: And can we look at the
6 Bates as always. Let's start every we
7 take an exhibit, go down to the Bates,
8 AMER 1462.

9 Q. Do you recognize this email?

10 A. I'm reading it now. I semi
11 recognize it. I'm not really sure. It seems
12 to me that it's mainly about him registering
13 a copyright for these -- for various logos
14 that we created for Indiana's Star of Hope.

15 Q. And what was the plan here, can you
16 just explain it?

17 A. I'm not sure. Can we just go
18 through the (inaudible). I think he wanted
19 me to -- I couldn't tell because at one point
20 Frumer wanted to do all the copyrights, and
21 then here it looks like he wants me to do it.
22 I'm not sure -- we were trying to do both an
23 historical home and a museum, the Star of
24 Hope, but I'm not sure what this is really
25 referring to. Oh, I know. First, he was

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1 M. McKenzie

2 asking me to copy Frumer on everything I did
3 about the historical museum and M-O-M and
4 whatever else.

5 And then Frumer said, Don't copy me
6 on anything, so I didn't know what was going
7 on. I was trying to get clarification.

8 Q. The reason that you would copy him
9 was to get privilege, so that nobody could
10 read your emails?

11 A. I don't know what you're talking
12 about. Copy who to get which for what?

13 Q. The lawyer, Frumer, was the purpose
14 of doing that so that there would be
15 privilege?

16 A. Privilege of what?

17 Q. The communications, legal
18 privilege, like when you tell your lawyer
19 something, that they can't tell anybody, was
20 that the point of copying Frumer?

21 A. No. I don't even know what you're
22 talking about honestly. No idea.

23 Q. Have you ever heard of the concept
24 if you tell something to a lawyer, it's
25 privileged and it can't be read by the

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1 M. McKenzie
2 public?

3 A. Only if he's my lawyer, and Frumer
4 was not my lawyer, so anything I told him
5 would be open to anybody, including Jamie
6 or -- Thomas, or anything. I didn't have any
7 standing with Frumer.

8 Q. At the top of the email it says,
9 Shutdown, or Dot Com Shut.

10 What does that mean?

11 A. Where is that?

12 Q. Top of the email.

13 A. I think once you get Sotheby's off
14 the ticket and Indiana catalogue and dot com
15 shutdown, I can line up all kinds of people
16 who will stand up with you.

17 He was trying to start the museum,
18 and I said to him, Look, insofar as there's a
19 giant amount of -- you're telling me that you
20 have all this shut down and you have a cease
21 and desist and you're ready to go, and do I
22 know anybody that would buy two LOVE
23 sculptures to help support the museum and
24 things of that nature, and I said to him,
25 Until all of those things are really done --

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1 M. McKenzie
2 (Reporter clarification.)

3 Q. You have to go a little slower and
4 louder. Your answers, as we discussed many
5 times, are very long and nonresponsive. If
6 you're going to go on and on like that, you
7 trail off. You're not answering the question
8 either, but you're trailing off, and the
9 reporter can't hear you, so...

10 A. I'm trying to answer the question.
11 The question seems to be what this is about.
12 I'm trying to understand it because it's a
13 bunch of jumbly things, and it appears that
14 this is something that Frumer asked me if I
15 could help him raise money for the Star of
16 Hope, because he had already shut down Simon
17 and the Robert Indiana catalogue.

18 I was skeptical that that had
19 happened because I was able to access the
20 Robert Indiana catalogue, and I told him that
21 until those things transpired I couldn't be
22 asking people if they wanted to buy into a
23 museum that so far didn't exist. And as we
24 stand here today, I haven't seen any net
25 change in that theoretical museum.

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EXHIBIT D - 77

1 M. McKenzie

2 I don't know if that -- I don't
3 know what you're trying to ask me, but I'm
4 trying to answer.

5 Q. Well, I mean, did you want to shut
6 down the website, the dot com shut, is that
7 what that means?

8 A. Not me. That was them shutting it
9 down, not me.

10 Q. You didn't want that to happen?

11 MR. MARKHAM: Objection. Just
12 asked and just answered.

13 MR. SPIRO: Objection is noted.

14 Q. Answer my question, Mr. McKenzie.

15 A. Not my business. I didn't care one
16 way or the other.

17 MR. SPIRO: Tab 93. Bates 1406,
18 and we're on Exhibit 24.

19 (Exhibit 24 marked for
20 identification.)

21 Q. Do you recognize this?

22 A. Do you have.

23 MR. RYAN: Do you have the prefix
24 for that exhibit?

25 MR. SPIRO: Go down. AMER 1406.

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1 M. McKenzie

2 A. That's going up. Is somebody else
3 regulating it, because I'm trying to go down.
4 It's going up.

5 Q. Somebody has control over the
6 mouse.

7 MR. SPIRO: So we will go down.

8 Q. Do you recognize this?

9 MR. SPIRO: Keep going.

10 A. Not really. It looks like
11 something that what's his name sent me,
12 Welsh. Oh, this is what his name, Jamie
13 Thomas, after we got just the start of the
14 WINE deal, all of a sudden he was like coming
15 up with every kind of variation of WINE that
16 existed in the world, and that we could do
17 all of those things, too.

18 And I tried to explain to him that
19 it was way too early. First, let's get WINE
20 out and get that going because, you know, it
21 was a big expense, seven years of it and no
22 return of any money. It was all cash out, no
23 cash in and trying to do ten different
24 languages of WINE. I don't know who's buying
25 this, Bulgarian BNHO. I mean, I don't think

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EXHIBIT D - 78

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1 M. McKenzie
 2 he understands how difficult the market is.
 3 This is him trying to come up with new ideas
 4 and would I be interested and should we
 5 approach Bob.
 6 And I said, I think it's too early.
 7 I don't see the reason to approach Bob on all
 8 of these offshoot things.
 9 I had been involved in other
 10 offshoot things, including the Hebrew LOVE,
 11 and I couldn't give it away.
 12 MR. SPIRO: Tab 95.
 13 Q. Are you done, sir?
 14 A. Yeah.
 15 MR. SPIRO: Tab 95, please. Bates
 16 stamp, AMER 1516.
 17 (Exhibit 25 marked for
 18 identification.)
 19 Q. This is an email from you to
 20 Mr. Frumer and Mr. Thomas, again, March 7,
 21 2018. And you ask them, Are you ready yet to
 22 green light make LOVE pieces?
 23 Do you see that?
 24 A. Yes.
 25 Q. It just doesn't seem possible, no

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1 M. McKenzie
 2 matter what was signed, that Bob wouldn't
 3 have the right to produce his most famous
 4 work.
 5 A. That's right.
 6 Q. What you wanted was the green light
 7 to start making LOVE pieces, correct?
 8 A. Yes. I didn't want to upset them,
 9 even though I knew they had the right to do
 10 it, I wasn't going to force them to do it. I
 11 just thought --
 12 MR. MARKHAM: You answered the
 13 question.
 14 A. It would be a noncopyright LOVE.
 15 You can't copyright it, but you could put
 16 Robert Indiana's name on it, and, you know, I
 17 thought they should do it. I still think
 18 they should do it.
 19 Q. You yourself wanted to do it,
 20 right?
 21 A. Yeah, absolutely.
 22 Q. And it was his most famous work,
 23 right?
 24 A. Yeah, I think so.
 25 Q. The thing is that if these are done

1 M. McKenzie
 2 while Bob is alive, they are important works
 3 of art.
 4 Do you say that?
 5 A. Yes, I think so.
 6 Q. Later they are estate stamped, not
 7 as valuable, right?
 8 A. Right.
 9 Q. You wanted to do it while he was
 10 alive, right?
 11 A. We needed Bob to say yes to that.
 12 Q. Never did?
 13 A. No. We never finished it. He got
 14 wrapped up in too many other things. Frumer
 15 didn't see why that was important. His big
 16 thing was trying to get rid of Morgan.
 17 MR. SPIRO: Tab 99. AMER 1188.
 18 (Exhibit 26 marked for
 19 identification.)
 20 Q. Have you looked at these text
 21 messages?
 22 A. Yes.
 23 Q. And this is a -- you know, this is
 24 a yes or no question.
 25 A. I said, yes.

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1 M. McKenzie
 2 Q. Okay. And I'm about to ask another
 3 yes or no question --
 4 A. Okay.
 5 Q. -- so I'm going to try to frame it
 6 that way, so we don't spend two hours on
 7 this.
 8 A. So ask me the fucking question.
 9 Q. I'm about to ask you the question.
 10 My question is: Is this you and
 11 Jamie -- is a lot of these messages you and
 12 Jamie discussing potential ideas of other art
 13 projects to do with Indiana?
 14 A. Yes.
 15 MR. SPIRO: Is this the top?
 16 A. Is this the what?
 17 MR. SPIRO: Are we at the top of
 18 this exhibit? Oh, you can't highlight
 19 it. So this is -- I'm looking at the
 20 top right of the screen.
 21 Q. It says, Yes, is another good one.
 22 I'm still wondering if John is certain that
 23 all Simon has is limited rights to LOVE, why
 24 don't we blast it out on the canvas, we'll
 25 anchor the Star of Hope?

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1 M. McKenzie

2 A. Yeah. John -- again, I didn't read
3 the contract. John had the contracts. His
4 statement to me was that all they had --
5 Morgan, was very limited rights to LOVE. And
6 I asked him if they had rights to stop
7 Indiana from doing LOVE, and he said no.

8 And I said, Well, if you want to
9 try to endow the Star of Hope, why don't you
10 do a dozen canvasses, six, whatever number
11 you want, and I will get people onboard that
12 will donate that money back to the Star of
13 Hope, so that they can fix it up.

14 That's what that is about.

15 Q. LOVE is what everyone wants. We
16 should wait to see what happens before we do
17 LOVE. I thought John determined Simon only
18 had contract for a sculpture, and what would
19 prevent doing two dimensional work. We have
20 to be careful with doing any work before a
21 certain year.

22 A. I don't know what that's about.
23 That's all -- they have the information.
24 They're not giving it to me. They're asking
25 me how I can help this foundation. I'm

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1 M. McKenzie

2 giving them ideas, but they're not giving me
3 all the facts. There's something going back
4 stage, and I don't know what it's about. And
5 that's why this thing goes all over the
6 board.

7 Q. Well, one of the things it was
8 about was producing LOVE without Morgan,
9 right?

10 A. A hundred percent.

11 Q. Okay. And --

12 A. (Inaudible.)

13 Q. Yes, 100 percent sounds like an
14 answer. I'm not asking for further
15 explanation.

16 A. A thousand percent.

17 Q. A thousand percent.

18 It's not a question about what
19 people want. It's a question of what we can
20 do without getting in trouble. The
21 nonpayment and noncompliant accounting would
22 terminate any contracts.

23 A. That's correct.

24 Q. And that was how Brannan is going
25 to use the litigation and how they were going

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EXHIBIT D - 79

1 M. McKenzie

2 to get out of the contract, right?

3 MR. MARKHAM: Objection.

4 A. I don't -- you have to ask Brannan
5 that.

6 Q. Well, it was an idea that you
7 discussed with Thomas, correct?

8 A. But not with Brannan. I don't know
9 what Brannan --

10 Q. That's not my question, sir.

11 My question is: Did you discuss it
12 with Thomas? Listen to my question.

13 A. Yes. Yeah.

14 MR. MARKHAM: Don't shout at the
15 witness, Alex. Don't shout.

16 Q. Did you discuss it with Thomas,
17 sir?

18 A. I just said yes.

19 Q. That was the plan that you and
20 Thomas discussed about using a legal strategy
21 to get out of the contract, correct?

22 MR. RYAN: Objection.

23 A. See, LOVE is not part of the
24 contract because Indiana gave all the rights
25 he owned. He had no rights to LOVE. He knew

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1 M. McKenzie

2 it. Morgan knew it. Simon knew it. And
3 they illegally put a copyright stamp over and
4 over and over again and then resold it, which
5 was a real problem.

6 And I told Indiana, Anyone,
7 including me, including you, including your
8 dog, can do LOVE.

9 Q. Who came up with the idea of using
10 the noncompliant accounting to get out of the
11 contract, whose idea was it?

12 MR. RYAN: Objection.

13 A. That was Frumer's plan, I believe.

14 Q. And in these text messages you guys
15 are no longer using email, right, you
16 switched to text messages, correct, these are
17 text messages?

18 A. It's not that we switched. We did
19 both.

20 Q. But these conversations you decided
21 to have in text messages, is that correct?

22 A. That's Jamie doing text messages
23 and me responding.

24 Q. Right. But you respond via text
25 message, also, don't you?

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EXHIBIT D - 80

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1 M. McKenzie
 2 A. Yes. But as a general matter, if
 3 someone texts you, you're going to text them
 4 back, not switch over to email.
 5 Q. And the emails, a lot of them went
 6 missing, right, you don't have an
 7 explanation, but they went missing, right?
 8 A. I don't know that they did or
 9 didn't. I have no information about that, as
 10 I've said now five times.
 11 Q. But we have the texts that we're
 12 looking at now, right?
 13 A. Yeah.
 14 Q. Best case scenario, Page 1194, is
 15 we can be done with them, right, and them
 16 means Morgan, right, dot, dot, dot. Does
 17 Morgan have signed docs Bob doesn't have?
 18 MR. MARKHAM: What are you asking?
 19 A. Where's that? I don't -- what's
 20 the question?
 21 MR. MARKHAM: You're leading him.
 22 MR. SPIRO: Excuse me. John,
 23 Mr. Markham, it's Objection. It's not
 24 Objection, leading the witness.
 25 MR. MARKHAM: What are you asking?

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1 M. McKenzie
 2 MR. SPIRO: I will -- if you let me
 3 finish, I'll ask the question. If you
 4 keep interrupting and coaching the
 5 witness, I won't be able to finish my
 6 question.
 7 MR. MARKHAM: I was not
 8 interrupting you.
 9 MR. SPIRO: Yeah, you were,
 10 actually.
 11 Q. Mr. McKenzie --
 12 A. Yeah.
 13 Q. -- do you see the statement, Best
 14 case scenario is we can be done with them.
 15 Does Morgan have signed docs Bob doesn't
 16 have?
 17 A. I don't see it, no.
 18 MR. SPIRO: We'll use the mouse.
 19 A. Where is it? Okay. I see it.
 20 Q. Best case scenario is we can be
 21 done with them, but what people want has
 22 little to do with whether we can legally go
 23 forward.
 24 Do you see that?
 25 A. Yes.

1 M. McKenzie
 2 Q. And what you're talking about here
 3 is getting rid of Morgan, and moving forward
 4 with LOVE without Morgan, right?
 5 A. Oh, that's what they're saying they
 6 want to do and can I help them.
 7 I'm just saying, Whatever you want
 8 to do, but you can't do it until you get the
 9 things done that you say you're going to do.
 10 I mean, you said you shut down
 11 RobertIndiana.com. I didn't see that happen,
 12 so until I see things happen, I can't really
 13 respond to what you're asking.
 14 MR. SPIRO: Page 1198.
 15 Q. It's your testimony, Mr. McKenzie,
 16 while we're going to this that this is just
 17 their idea, and you're kindly responding,
 18 you're not part of plan, is that what you're
 19 saying?
 20 A. No. I was part of the plan.
 21 Q. Okay.
 22 A. Without a doubt.
 23 Q. That's what it looks like.
 24 MR. SPIRO: Page 1198, particularly
 25 Dylan --

Page 317

1 M. McKenzie
 2 MR. MARKHAM: Had you finished with
 3 your answer?
 4 THE WITNESS: Yeah, I'm done.
 5 Q. Particularly, Dylan -- this is what
 6 the message says -- particularly, Dylan, now
 7 is the time to come back totally against
 8 Simon with a demand for accounting in Federal
 9 Court.
 10 MR. SPIRO: Can we highlight that.
 11 A. I see it. So you think he
 12 shouldn't have to provide an accounting that
 13 he wrote into his own contract, is that what
 14 you said?
 15 Q. You don't get to ask the questions.
 16 I ask the questions.
 17 A. Okay.
 18 Q. So this is an accurate statement of
 19 the plan?
 20 MR. MARKHAM: Objection.
 21 Objection.
 22 A. I thought Indiana should have an
 23 accounting.
 24 Q. And you thought it should be in
 25 Federal Court, and that was part of the

EXHIBIT D - 81

1 M. McKenzie
2 strategy, right?
3 A. Well, that was where it was going.
4 Where else would it go? I had three other
5 attorneys --
6 Q. You said that --
7 A. -- telling him that's what to do,
8 so I'm not an attorney, but three out of
9 three said the same thing.
10 Q. You said that Morgan and Simon are
11 liars, thieves and crooks and you said you
12 believed that to be true, correct?
13 A. I believed that to be true from
14 everything that Thomas, Frumer and Indiana
15 told me. I don't have as much access to that
16 information as they do, and the listing on
17 the Panama Papers doesn't make me feel any
18 better about it.
19 Q. Okay. Can you tell me anything
20 specific that Indiana ever told you that was
21 negative about Morgan, anything else you
22 haven't told me already today?
23 A. I'd have to think about it. It was
24 years of him telling me negative things about
25 Morgan. Most of it was he says, Simon trying

1 M. McKenzie
2 you do remember a specific statement, the
3 answer is, yes, I remember X.
4 A. Yes, I remember X.
5 Q. What do you remember?
6 A. Among the many Xs that I remember
7 is him saying that Simon was trying to
8 control his life, would not let him do any of
9 his work. He was deathly afraid to do
10 anything. He also said that Simon got into
11 his life by -- after I gave him money in 2000
12 -- or excuse me, 1995 to '07 is the first
13 time he made money, and he didn't file his
14 taxes and Simon slithered up there with a
15 yellow pad and got him to sign over LOVE by
16 taking him to an some accountant in
17 Massachusetts -- Mr. Black was his name, who
18 then told him that the only way he could
19 represent Indiana without Indiana going to
20 jail forever was if Indiana gave him all the
21 rights to LOVE, and that seemed kind of
22 harsh.
23 And on top of this, it seemed like
24 that's what Simon used over and over again to
25 get Indiana to do things that he really

1 M. McKenzie
2 -- he says I'm not allowed to do any of my
3 work and if I do any of my work, he's going
4 to come up here and confiscate it.
5 I said, Well, what's the basis of
6 that, what could be the possible basis if you
7 drew LOVE on a piece of paper, that he can
8 get on the ferry, and come up and steal it.
9 He said, I don't know, but that's
10 what he says he can do.
11 I never heard of anything like it.
12 Every older artist lives off their icon when
13 they're old, and he should have been able to
14 produce Love any way he wanted --
15 (Technical difficulty.)
16 Q. All right. I mean, the answer was
17 completely nonresponse, too. I was asking a
18 specific question.
19 A. What was it?
20 Q. The specific question is just: Do
21 you remember any other specific statement
22 that came out of Indiana's mouth about Morgan
23 that you haven't told me today? If you don't
24 remember any specific statement, the answer
25 is I don't remember. If the answer is that

1 M. McKenzie
2 didn't want to do. That's what Indiana told
3 me, that Simon was telling him to save him
4 from going to jail, and he could always bring
5 that up again and he put him back in jail.
6 It was hundreds of statements that he made
7 against Simon and against Morgan.
8 Q. Any other specific statements that
9 you can recall at this time?
10 A. Well, the nonpayment thing came up
11 about every second time that I went up there.
12 Q. Anything else?
13 A. And another lawyer showed up that
14 went over to a firm, that there was no
15 accounting whatsoever --
16 (Technical difficulty.)
17 Q. I said, Mr. McKenzie, is there any
18 other specific statement that you haven't
19 already told me about today, that you can
20 share that Indiana said about either Morgan
21 or Simon?
22 A. As I said, you know, it was
23 constant barrage of Indiana about Simon
24 made --
25 Q. Let me stop you, sir. Let me stop

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EXHIBIT D - 82

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1 M. McKenzie
2 you, sir. I'm not asking about barrages.
3 I'm asking you about specific statements,
4 quotes that you can give me that he said. If
5 you don't remember anything more, or you've
6 already told me them, the answer is no. If
7 there's a specific quote you remember, please
8 tell me.

9 A. It's all about the nonpayment, the
10 nonaccounting and that he wanted to get rid
11 of Simon or -- that's it. That's your
12 synopsis. It was over and over and over and
13 over again. I must have heard it 300 times.

14 Q. Okay. Nothing else beyond that and
15 what you've already told me?

16 A. Well, that he was an arch thief and
17 stealing from him. That's it. That was the
18 synopsis. It seemed not very good to him.
19 The other thing he said, he didn't trust
20 Morgan because he couldn't understand how
21 Simon was telling him that the guy behind
22 Morgan was Guy Naggar, was a huge
23 collector -- was Guy Naggar, G-U-Y,
24 N-A-G-G-A-R. Yet after years and years and
25 years, he had never met Guy Naggar, nor had

1 M. McKenzie
2 I don't mean this in any negative way, but
3 you have a tendency, as you've now heard many
4 times, to kind of carry on and ramble.
5 Almost all of these questions are pretty
6 quick, if you'd just answer the question.

7 The question is just simply:
8 You've now told me the same thing five or six
9 times.

10 A. (Inaudible.)

11 Q. If there is any -- please don't
12 interrupt. If there is any --

13 A. Move on.

14 Q. If there is any other quote, tell
15 me there's another quote. If there are no
16 other quote, then you say, There are no other
17 quotes that I can think of, and then we move
18 on to the next question.

19 A. At this time, I'll say let's move
20 on.

21 Q. Same question, but now I'm asking
22 if there's anything different that Thomas
23 ever said about Morgan or Simon, that you
24 haven't already told me today.

25 Again, I'm only looking for

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1 M. McKenzie
2 he met Robert Gore, nor had he met the guy
3 that was -- whatever his name was -- he never
4 met any of the people from Morgan.

5 And he said to me, How is it
6 possible that Guy Naggar is a huge collector,
7 which he was, and yet he wouldn't be
8 interested in coming to meet me, nor did he
9 even come to meet me when I had shows in
10 Europe. How is that possible?

11 I said, I don't know. I can't
12 imagine being a collector and being the key
13 money behind the publishing of Robert Indiana
14 and not stopping in on his show. And if he's
15 a wealthy guy, as he was, why couldn't he
16 take a plane to Vinalhaven (inaudible). It
17 makes no sense.

18 I mean, he had a show in London, he
19 didn't show up for that. He had a show in
20 Paris, he didn't show up for that. I'm a
21 collector, so if I'm involved in
22 (inaudible).

23 (Reporter clarification.)

24 Q. Mr. McKenzie, the other thing is I
25 know we're getting late in the day here, and

1 M. McKenzie
2 specific statements, like a quote.

3 A. Well, Thomas said they were
4 thieves, and that they hadn't paid for seven
5 or eight years, which I was shocked by.

6 Q. Yeah. Mr. McKenzie, Mr. McKenzie,
7 let me stop you. You've already told me
8 that.

9 A. Okay.

10 Q. I'm asking for something you have
11 not told me yet.

12 Is there anything you have not told
13 me yet? You've told me that at least 10
14 times. I'm asking for anything that you have
15 not told me.

16 A. I'm not sure. I think that's about
17 all I can think of.

18 Q. Okay. And then what about Frumer,
19 is there anything that Frumer said about
20 Morgan or about Simon that's different from
21 all the other stuff you've already told me
22 people told you about Morgan and Simon,
23 anything else different?

24 A. Well, Frumer wanted to know how it
25 was possible that Simon could be the

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1 M. McKenzie
2 exclusive representative of Robert Indiana
3 and at the same time the key salesperson, or
4 whatever it is he was claiming, for Morgan.
5 And he asked me if I thought that was a
6 conflict of interest.

7 And I said, From what I know, I
8 don't know anybody else in the art world
9 that's ever done something like that, and it
10 seems a little dirty.

11 Q. Did you ever say -- is there
12 anything else?

13 A. No. That's good.

14 Q. Did you ever say or did Thomas say
15 to you, I would just be careful for now. If
16 you upset Bob, it could backfire. In the
17 future, it will be easier.

18 Do you remember him saying that?

19 A. Yeah, I do. What was it in
20 reference to?

21 Q. Well, I assumed it was in reference
22 to your all plan to take LOVE and profit off
23 of it.

24 A. See, you assume a lot of stuff.

25 MR. MARKHAM: Objection.

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1 M. McKenzie

2 Objection.

3 Q. You asked me what it was in
4 reference to. That's what the evidence looks
5 like.

6 (Technical difficulty.)

7 MR. SPIRO: Tab 71, please.

8 Exhibit 27, AMERICAN -- AMER 1594.

9 (Exhibit 27 marked for
10 identification.)

11 Q. You say here that you paid three
12 different attorneys to go over the situation.

13 They all came to the same
14 conclusion, right?

15 A. Right.

16 Q. And the conclusion was basically
17 that if the licensing was properly handled,
18 there could be a windfall, right?

19 A. Yeah. I don't know. That wasn't
20 really the issue. The issue was about them
21 not paying, them not doing their accounting
22 and them going forward with licensing and
23 things that we didn't think was legal, and
24 that it could be done another way. It had to
25 be rethought, and the licensing could be

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EXHIBIT D - 83

1 M. McKenzie

2 good, but we can't license a copyright that
3 we don't own. We were very concerned that
4 that was a very bad thing.

5 I mean, you know, I write books and
6 do films and TV, so copyright things come up
7 all the time. And that one was the most
8 notorious bad use of a copyright that I've
9 ever seen, and probably is the most notorious
10 fraudulent use of a copyright ever done.
11 That was what the attorneys told me.

12 Q. What's your -- what is your basis
13 for saying that Morgan fraudulently procured
14 the rights to LOVE, what is your evidence of
15 that?

16 A. It's not about fraudulently
17 procuring the rights. There are no rights.
18 The rights are held by the public. It's in
19 public domain. So when they sell the rights
20 to LOVE, that is a fraudulent sale of a
21 copyright they don't own. And when they put
22 it on the sculpture as a copyright, that's a
23 fraudulent use of a copyright that they don't
24 own, and that is easily researched. Any
25 decent -- somebody at your firm, I'm sure,

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1 M. McKenzie

2 can look at it. Any firm can find out very
3 quickly that the copyright is in public
4 domain.

5 Q. Is it your testimony that Morgan
6 fraudulently procured Indiana to signing the
7 contract that gave them the rights to LOVE?

8 A. They have no rights to LOVE. They
9 fraudulently misrepresented the contract that
10 they had knowingly and fraudulently
11 misrepresented the contract. All that
12 contract said -- and you should read it, so
13 you understand what you're talking about.

14 All it says is, I, Robert Indiana,
15 give you the rights to what I own. He did
16 not own those rights. He knew he didn't own
17 the rights. He had gone in public saying he
18 knew he lost those rights. It's in his own
19 book, his own biography. There's a whole
20 chapter that says, How I lost LOVE. Everyone
21 knows it. Susan Sheehan knows it. Every
22 other catalogue knows it.

23 There are no rights to LOVE. So
24 asserting a copyright, and then going after a
25 fraudulent trademark, that's fraud. And

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EXHIBIT D - 84

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1 M. McKenzie
2 putting it on all the sculptures, that's
3 fraud, too. And there's a really good chance
4 that all of those sculptures need to be
5 stricken.

6 Certainly all of the licensing,
7 it's a huge problem because people had been
8 fraudulently convinced that Morgan owns the
9 copyright to LOVE, which they don't, and it's
10 stamped on millions of objects all of which
11 are testimony to fraud.

12 Q. All the concluded requests for
13 accounting payments then would end this.
14 This is the way to get out of the contract,
15 right, all concluded requests for accounting
16 and payments would end this, right?

17 A. That's what I was told, yes.

18 Q. All concluding, getting all rights
19 back and proceeding from there with addition
20 7, 8 or 9 figure income is the way to go,
21 right?

22 A. A hundred percent.

23 Q. And if you could get the license
24 back for LOVE, it would be a big windfall,
25 right?

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1 M. McKenzie

2 A. Yeah. But the license is illegal.
3 It's a fraudulent license. It needs to be
4 thought of, how can we license this in a way
5 that is not fraud. Right now it's fraud,
6 F-R-A-U-D, 100 percent.

7 Q. And if it was properly handled,
8 there would be a windfall, right?

9 A. If it was not fraudulent, you could
10 potentially make money from it, but you don't
11 want to go and use a fraud.

12 Q. And this is your words --

13 A. That's right.

14 Q. -- windfall, right?

15 A. A hundred percent.

16 Q. And that windfall would benefit
17 Mr. McKenzie, also, wouldn't it?

18 A. How? That's for the estate to do.
19 It has nothing to do with me. They're
20 asking, How do I make this work. I had three
21 attorneys go up there to analyze it. This is
22 what they told me. I relayed it back to
23 them.

24 Q. And that was all out of the
25 goodness of your heart.

1 M. McKenzie
2 There was no desire to make money
3 off of the windfall?

4 A. That's right. I have HOPE, and
5 I've got 500 other things that I'm doing
6 besides Indiana. I don't need LOVE. I don't
7 need the headaches of it. I was explaining
8 to them how they could run with it. That's
9 it. I never stopped to think it over.

10 Q. You were --

11 A. In fact, when they asked me to be
12 on the board of directors of this, I said, It
13 feels like a conflict of interest. I do not
14 want to be on the board of directors. You
15 should do that apart from me.

16 Q. Okay. And --

17 A. Simon Salama-Caro set up a board of
18 directors where seven people would vote on
19 it. Do you know who the seven people were?

20 Q. In any event, I have -- no, and I'm
21 not asking you that question. I get to ask
22 the questions.

23 A. I'm just asking if you want to
24 know.

25 Q. And if you had the windfall from

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1 M. McKenzie

2 the LOVE works, then you wouldn't have to do
3 things like, you know, manipulate
4 photographs, add series to numbers of
5 sculptures --

6 A. Yeah.

7 Q. -- and accused all of these people
8 of being drug addicts and liars who accused
9 you of being an imposter, right?

10 MR. MARKHAM: Objection.

11 Objection. Objection.

12 A. That's the dumbest thing I ever
13 heard. And if a leprechaun on a unicorn came
14 over with a pot of gold, I'm set for life.
15 So what other theoretical nonsense do you to
16 propose? How much theoretical nonsense do
17 you want me to comment on, and then complain
18 I'm talking about?

19 Q. We will do just a few more tabs.

20 MR. SPIRO: Tab 22, Exhibit B,
21 let's start there.

22 This is 28.

23 (Exhibit 28 marked for
24 identification.)

25 MR. SPIRO: Okay. Can you go down,

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EXHIBIT D - 85

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1 M. McKenzie
 2 please.
 3 Q. Can you just -- are these photos
 4 fair and accurate --
 5 A. Yeah.
 6 Q. -- of Bob looking and approving
 7 works?
 8 A. He's signing them. That's what
 9 he's doing.
 10 Q. Is that fair and accurate?
 11 A. Yes.
 12 MR. SPIRO: Tab 22 to 28, which
 13 we'll call Exhibit 29. You know, and we
 14 can do for the court reporter's benefit,
 15 we can do A, B, C, D, E and F.
 16 (Exhibit 29A, B, C, D, E and F
 17 marked for identification.)
 18 Q. Same questions: Do you recognize
 19 these? Are they fair and accurate?
 20 A. Yes.
 21 Q. These are all fair and accurate,
 22 correct?
 23 A. You've said that already five
 24 times, yes.
 25 MR. SPIRO: Then the final one,

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1 M. McKenzie
 2 which is Tab -- Exhibit -- Tab 4,
 3 Exhibit C, and now we're on 30.
 4 (Exhibit 30 marked for
 5 identification.)
 6 Q. And what I'm asking you here: Are
 7 these -- is this an accurate, authentic list
 8 that shows the works you produced for Indiana
 9 that were sold by Rosenbaum --
 10 A. Yes.
 11 Q. -- the sale dates and prices?
 12 A. Yes.
 13 Q. And it's your position that all of
 14 these works were approved by Robert Indiana?
 15 A. A hundred percent.
 16 MR. SPIRO: And then final, final,
 17 we're now Exhibit 31, which is going to
 18 be Tab 72. And this is going to be
 19 Bates number AMER 1591.
 20 Q. And I want to direct your attention
 21 to the bottom paragraph of the first page.
 22 MR. SPIRO: And we'll highlight it.
 23 (Exhibit 31 marked for
 24 identification.)
 25 Q. Just the first sentence: It's

1 M. McKenzie
 2 going to look really bad to show \$60,000 in
 3 royalties for a half a year, even if I paid
 4 it with \$440,000 especially when I am
 5 positioning for LOVE?
 6 A. That's right. Howard was really
 7 hungry to get LOVE. I personally didn't
 8 care.
 9 And what I was saying to him was,
 10 If you really, really want to get LOVE,
 11 you've got to start selling stuff because
 12 right now I've been carrying this thing and
 13 losing money year after year after year. I
 14 don't feel like doing it anymore.
 15 You know, that's me taking \$440,000
 16 out of my pocket and dropping it into Robert
 17 Indiana's pocket because all he earned was
 18 \$60,000 in royalties because -- I don't know
 19 what else Rosenbaum was doing, but they fell
 20 asleep at the wheel, and they weren't
 21 selling.
 22 And he was always complaining that
 23 Simon ruined it, Simon ruined his market.
 24 And even then I can't really be jerking
 25 around with a \$60,000 royalty when I have to

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1 M. McKenzie
 2 pay a million dollars a year.
 3 Q. But, of course, when you respond,
 4 you don't say who wants anything to do about
 5 LOVE, right, you don't say, I don't want
 6 anything to do with LOVE, do you? It's a yes
 7 or no question.
 8 Do you say, I don't want anything
 9 to do with LOVE, do you say that?
 10 A. No. I didn't say that. I never
 11 would.
 12 Q. Right. Because the plan all along
 13 was to get that, right?
 14 A. That's what Frumer was trying to
 15 do, and that's what Rosenbaum was trying to
 16 do.
 17 And I said to them, I don't know
 18 what's going to happen with that, so I can't
 19 get wrapped up in it, but if you're really
 20 hot to do it, you'd better start selling some
 21 stuff. That's what that was about.
 22 MR. SPIRO: I have no further
 23 questions.
 24 THE WITNESS: So are we done?
 25 MR. SPIRO: I think so.

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1 M. McKenzie
 2 Anybody else have questions?
 3 MR. RYAN: Paul Ryan here. I do
 4 not.
 5 MR. SPIRO: Anybody else who's on
 6 the record her have questions?
 7 MR. VAZQUEZ: This is John Vazquez
 8 for the State. Nothing from us.
 9 MR. MARKHAM: John Markham for
 10 Mr. McKenzie. I have no questions.
 11 MR. SPIRO: We're done.
 12 Thank you, everybody.
 13 THE WITNESS: All right.
 14 THE VIDEOGRAPHER: We are now off
 15 the record, 4:46 p.m.
 16 (Time noted: 4:46 p.m.)
 17
 18
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 25

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1 ---
 2
 3 I N D E X
 4 ---
 5

6 MICHAEL MCKENZIE PAGE
 7 By Mr. Spiro 3
 8
 9

10 ---
 11 E X H I B I T
 12 ---

12 EXHIBIT PAGE
 13 Exhibit 1 Email chain 118
 14 Exhibit 2 Document AMER 1718 123
 15 Exhibit 3 Book of Love cover
 16 MAF 55516158 155
 17 Exhibit 4 Email AMER 1626 156
 18 Exhibit 5 Photo Johnsonville
 19 Discovery 0193 187
 20 Exhibit 6 Wine Contract 212
 21 Exhibit 7 Wine Water & Spirits
 22 Agreement AMER 2340 214
 23 Exhibit 8 Email chain 9/22/17 222
 24 Exhibit 9 Email chain AMER 1331 241
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 3 Exhibit 10 Document MVM 4729 249
 4 Exhibit 11 Email chain AMER 1838 254
 5 Exhibit 12 Email chain AMER 1836 255
 6 Exhibit 13 Email chain JLT 10699 260
 7 Exhibit 14 Email chain AMER 1834 263
 8 Exhibit 15 Letter MAF 1176 265
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 10 Exhibit 17 Document AMER 1594 271
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 12 Exhibit 19 Email chain JLT 16452 276
 13 Exhibit 20 Email chain AMER 1718 291
 14 Exhibit 21 (NOT MARKED)
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CERTIFICATE

I HEREBY CERTIFY that the witness,
MICHAEL McKENZIE, was duly sworn by me and
that the deposition is a true record of the
testimony given by the witness.

Leslie Fagin,
Registered Professional Reporter
Dated: September 9, 2020

(The foregoing certification of
this transcript does not apply to any
reproduction of the same by any means, unless
under the direct control and/or supervision
of the certifying reporter.)

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do hereby
certify that I have read the foregoing pages,
and that the same is a correct transcription
of the answers given by me to the questions
therein propounded, except for the
corrections or changes in form or substance,
if any, noted in the attached Errata Sheet.

MICHAEL McKENZIE DATE

Subscribed and sworn
to before me this
day of _____, 2020.

My commission expires:

Notary Public

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